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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION-RIVERSIDE

- - -

HONORABLE VIRGINIA A. PHILLIPS, JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. EDCR 12-92 (B) VAP
	)	
SOHIEL OMAR KABIR,	)	Trial Day 4
RALPH KENNETH DELEON,	)	
	)	Morning Session
	)	
Defendants.	)	
	)	

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REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
Riverside, California  
Friday, August 15, 2014  
9:04 p.m.

PHYLLIS A. PRESTON, CSR, FCRR  
Federal Official Court Reporter  
United States District Court  
3470 Twelfth Street  
Riverside, California 92501  
(951) 205-7959  
stenojag@aol.com

1 APPEARANCES:

2  
3 For the Plaintiff:

4 OFFICE OF THE UNITED STATES ATTORNEY

By: **SUSAN DEWITT**

5 **CHRISTOPHER GRIGG**

**ALLEN CHIU**

6 Assistant United States Attorneys

3403 Tenth Street, Suite 200

7 Riverside, California 92501

8  
9  
10 For Defendant Kabir:

11 OFFICE OF THE FEDERAL PUBLIC DEFENDER

BY: **JEFFREY AARON**

12 **ANGELA VIRAMONTES**

**MATTHEW LARSEN**

13 Deputy Federal Public Defenders

3801 University Avenue, Suite 700

14 Riverside, California 92501

15  
16 For Defendant DeLeon:

17 **DAVID J. THOMAS**

18 CJA Appointed Counsel

1500 Iowa Avenue, Suite 220

19 Riverside, California 92507

20

21

22

23

24

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## I N D E X

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1 FRIDAY, AUGUST 15, 2014; RIVERSIDE, CALIFORNIA

2 -o0o-

3 (In the presence of the jury:)

4 THE CLERK: Item No. 1, EDCR 12-092(B) VAP, United  
5 States of America v. Sohiel Omar Kabir and Kenneth Ralph  
6 DeLeon. 09:04

7 Counsel.

8 MS. DEWITT: Good morning, Your Honor. Good morning,  
9 ladies and gentlemen. Susan DeWitt on behalf of the United  
10 States of America. 09:05

11 MR. GRIGG: Good morning, Your Honor. Good morning,  
12 ladies and gentlemen. Chris Grigg for the United States.

13 THE COURT: Thank you.

14 MR. CHIU: Good morning, Your Honor. And good  
15 morning. Allen Chiu on behalf of the United States. 09:05

16 THE COURT: Thank you.

17 MR. AARON: Good morning, Your Honor. Good morning.  
18 Jeffrey Aaron for Mr. Sohiel Kabir.

19 THE COURT: Thank you.

20 MR. LARSEN: Good morning, Your Honor. Good morning,  
21 ladies and gentlemen. Matt Larsen for Mr. Kabir. 09:05

22 MS. VIRAMONTES: Good morning. Angela Viramontes on  
23 behalf of Sohiel Kabir.

24 THE COURT: Thank you. Good morning.

25 MR. THOMAS: Good morning, Your Honor. Dave Thomas 09:05

1 on behalf of Ralph Kenneth DeLeon who is to my right. And to  
2 his right is Kaye Limbaugh.

3 Good morning, ladies and gentlemen.

4 THE COURT: Thank you.

5 All right. The Government may call its next witness. 09:05

6 MS. DEWITT: Your Honor, before we do that, I would  
7 like to take an opportunity to move some exhibits into evidence  
8 that were introduced yesterday.

9 THE COURT: All right. Go ahead.

10 MS. DEWITT: At this time, the Government would move 09:05  
11 to introduce Government's Exhibit 9-A1 through 24.

12 THE COURT: Any objection?

13 MR. AARON: I'm sorry, Your Honor. Can I have just a  
14 moment?

15 No objection. 09:06

16 MR. THOMAS: No objection, Your Honor.

17 THE COURT: 9-A1 through 24 ordered admitted.

18 (Government's Exhibit Nos. 9-A1 through 24 admitted.)

19 MS. DEWITT: And at this time, the Government would  
20 move to introduce Government's Exhibit 10-A1 through 10-A31. 09:06

21 MR. AARON: No objection.

22 THE COURT: Thank you.

23 MR. THOMAS: No objection, Your Honor.

24 THE COURT: They are ordered admitted.

25 (Government's Exhibit Nos. 10-A1 through 10-A31 admitted.) 09:06

1 MS. DEWITT: And at this time, the Government would  
2 move to introduce Government's Exhibit 12-A1 through 12-A38.

3 MR. AARON: No objection.

4 MR. THOMAS: No objection.

5 THE COURT: All right. They are ordered admitted.

09:06

6 (Government's Exhibit Nos. 12-A1 through 12-A38 admitted.)

7 MS. DEWITT: At this time, the Government would move  
8 to introduce Government's Exhibit 14-A1 through 14-A27,  
9 although I'll note that 26 was actually moved in yesterday.

10 THE COURT: All right. Any objection?

09:07

11 MR. AARON: None.

12 MR. THOMAS: None, Your Honor.

13 THE COURT: Thank you. Ordered admitted.

14 (Government's Exhibit Nos. 14-A1 through 14-A27 admitted.)

15 MS. DEWITT: And at this time, the Government would  
16 move to introduce -- move into evidence Government's  
17 Exhibit 15A-1 through 15A-58.

09:07

18 THE COURT: All right.

19 MR. AARON: No objection.

20 THE COURT: Thank you.

09:07

21 MR. THOMAS: No objection, Your Honor.

22 THE COURT: Ordered admitted. Thank you very much.

23 (Government's Exhibit Nos. 15-A1 through 15-A58 admitted.)

24 And your next witness is?

25 MR. GRIGG: Thank you, Your Honor. The Government

09:07

1 calls Mr. Nolan Avery.

2 THE CLERK: Sir, if you could stop there and raise  
3 your right hand.

4 **GOVERNMENT'S WITNESS, NOLAN AVERY, WAS SWORN**

5 THE WITNESS: Yes, ma'am.

09:07

6 THE CLERK: Thank you. You may be seated.

7 Please state your full name and spell it for the  
8 record.

9 THE WITNESS: Nolan Avery. N-O-L-A-N, A-V-E-R-Y.

10 THE COURT: All right. Thank you.

09:08

11 You may inquire.

12 MR. GRIGG: Thank you, Your Honor.

13 And before we begin, last night the Government did  
14 inform defense counsel of Mr. Avery and Mr. Wilson will be the  
15 witnesses first up today, and I believe the Court has binders  
16 for each of them.

09:08

17 THE COURT: All right. Thank you very much.

18 **DIRECT EXAMINATION**

19 BY MR. GRIGG:

20 Q. Good morning, Mr. Avery.

09:08

21 A. Good morning, sir.

22 Q. Are you currently employed?

23 A. Yes, sir, I am.

24 Q. What do you do?

25 A. I manage LAX Firing Range.

09:08



1 Q. And what is LAX Firing Range?

2 A. It's an indoor shooting range and supply store.

3 Q. And where is it located?

4 A. 927 West Manchester Boulevard, Inglewood, California.

5 Q. And is that near Los Angeles International Airport?

09:08

6 A. Yes, sir, just a few miles from the airport.

7 Q. That's where the name "LAX" comes from?

8 A. Yes, sir.

9 Q. How long have you been working there?

10 A. Approximately 13 years.

09:08

11 Q. And what are your duties and responsibilities as a manager  
12 at LAX Firing Range?

13 A. I manage day-to-day operations of the range, as well as  
14 teach training classes.

15 Q. And as managing day-to-day operations, what does that  
16 entail?

09:09

17 A. Oversight of the employees, as well as customer check-in  
18 procedures, inventory of firearms and ammunition, ordering of  
19 supplies, paying of invoices, payroll, pretty much everything.

20 Q. And you do sales as well?

09:09

21 A. Yes, sir, I do.

22 Q. So you mentioned this is an indoor shooting range. Can  
23 anybody, a member of the public, come to LAX Firing Range?

24 A. Yes, sir. The range is open to the public.

25 Q. Can they come there to shop for supplies?

09:09

1 A. Yes, sir.

2 Q. Can they come there to also shoot firearms?

3 A. Yes, sir.

4 Q. Do you have a range of supplies you sell, or is it very  
5 limited?

09:09

6 A. A range of supplies.

7 Q. What types of things do you sell at LAX Firing Range?

8 A. Holsters, grips, ammunition, shirts, shorts, tactical  
9 pants, boots, flashlights, watches, knives, handcuffs.

10 THE COURT: Can you slow down. You need to slow  
11 down.

09:10

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Thank you.

14 BY MR. GRIGG:

15 Q. Sorry to interrupt. There are a lot of folks learning  
16 this for the very first time. I will try and go slower, and if  
17 you can do the same, that would be great.

09:10

18 A. Yes, sir.

19 Q. So I think you got to watches, belts, knives. And I don't  
20 know if you can pick up from there or if you'd like to restart.

09:10

21 A. Yes, sir. We provide a lot of supplies for the shooting  
22 industry, which include boots, pants, shirts, tactical shirts,  
23 knives, holsters, ammunition, grips, sites, rifle rest,  
24 sandbags, emergency supply of food, things of that nature.

25 Q. Aside from the retail, there is another part of the

09:10

1 business, and that's the actual shooting range, the firing line  
2 itself; is that correct?

3 A. Yes, sir, it is.

4 Q. So with these two activities, do they take place in the  
5 same space?

09:10

6 A. There is -- we have a showroom, and it's separated from  
7 the range by a partitioned wall.

8 Q. I'm not going to ask you to repeat the list of all the  
9 things you sell, but are all those things in the showroom?

10 A. Yes, sir, they are.

09:11

11 Q. And how does one get into the firing line?

12 A. We have a security door, so we have to buzz people into  
13 the front door itself. As you enter the front door you're in  
14 the showroom. And then to go to the firing line you'd have to  
15 go back through another series of doors.

09:11

16 Q. So is the firing line separated from the showroom by a  
17 couple of doors?

18 A. Yes, sir, it is.

19 Q. How many lanes are there in the firing line?

20 A. There is 14.

09:11

21 Q. And members of the public can go in -- we'll talk about  
22 the check-in procedures in a minute -- and go into the firing  
23 line. Are they supervised or monitored by a person standing  
24 with them who works at LAX Firing Range?

25 A. For the most part, yes, sir.

09:11

1 Q. And is there an ability to monitor what happens in the  
2 firing range by LAX staff who are not on the line but may be in  
3 the showroom or in another office?

4 A. Yes, sir. The entire facility is covered by a CCTV  
5 system.

09:11

6 Q. And is there also a window, or some other way for staff  
7 just to make sure everything on line is going safely?

8 A. Yes, sir. The wall that separates the range from the  
9 showroom has a series of windows for us to be able to see  
10 through.

09:12

11 Q. Now, do you also have firearms for rent?

12 A. Yes, sir, we do.

13 Q. What types of firearms do you rent?

14 A. We rent pistols, revolvers, rifles, and shotguns.

15 Q. If someone wanted to come to the firing range, could they  
16 bring their own firearms?

09:12

17 A. Yes, sir, they could.

18 Q. Can they bring their own ammunition?

19 A. It depends on the caliber it is, but yes.

20 Q. What is the restriction for the caliber?

09:12

21 A. If they are bringing rifle ammunition, we don't allow  
22 outside rifle ammunition because of the damage that it can  
23 cause to the range. So that's a requirement to be purchased  
24 from our facility.

25 But if they bring handgun ammunition, as long as it's

09:12

1 is not Blazer, Wolf, orunjacketed lead, they can bring pistol  
2 ammunition with them.

3           However, if they rent our gun, they have to use our  
4 ammunition.

5 Q.    So the rifle ammunition can cause damage why? Why does  
6 that matter if it's a rifle versus a handgun?

09:12

7 A.    The facility is an indoor range, so it has, you know,  
8 walls and ceiling and the floor. Some of the rifle ammunition  
9 that's available has, like, steel penetration so it can damage  
10 -- the range itself has a canopy system. So the targets are  
11 hung off of a series of unistrut that goes down the range,  
12 which is a soft steel, so some of the ammunition can actually  
13 penetrate that and cause the canopy ceiling to collapse. So we  
14 regulate the ammunition of what's used out there.

09:13

15 Q.    So is it the case that handgun ammunition doesn't have  
16 that ability; it's not as powerful to damage the stuff in the  
17 firing range?

09:13

18 A.    It is not as powerful. It does have the ability, but it's  
19 less likely to happen with a handgun as it is a rifle.

20 Q.    Now, you mentioned a minute ago about things being strung  
21 to hang targets. Can you describe sort of the layout of the  
22 firing line itself?

09:13

23 A.    Yes, sir. As you enter, you enter from Lane 14, and  
24 everything will be to the left as you enter. There is a red  
25 line on the floor that separates where guns can be passed back

09:14

1 and forth, as far as from the booth to the benches. So we  
2 don't want guns on the benches. We want them to remain in the  
3 booth. So the red line is very distinguished.

4 Q. Can I pause you right there?

5 A. Sure.

09:14

6 Q. Can you help me get a visual layout?

7 So the lanes are arranged when you come in, and  
8 they're all to the left from the door?

9 A. That's correct, yes.

10 Q. And there are lane after lane. Are there dividers between  
11 the lane, or is this just an open sort of space?

09:14

12 A. No, sir. There are gray partitions, and the numbers are  
13 written across the top. So you can see what -- it starts at  
14 Lane 1 and it goes all the way across to Lane 14. And each one  
15 is designated by a partition itself, so you're actually in a  
16 booth, like a telephone booth with no door.

09:14

17 Q. So if someone is standing in the booth and they're looking  
18 down towards the range, what do they see?

19 A. They would see a piece of unistrut that goes all the way  
20 down with a series of steel cross-members that helps support  
21 the system.

09:14

22 Q. And that word you said, "unistrut," is that just a steel  
23 wire that runs away from them down toward the back of the  
24 range?

25 A. It's not an actual wire. It's a piece of metal. So the

09:15

1 wires inside the metal -- because the bullets can pierce the  
2 wire and the lane will go down; it's not operable. So the  
3 unistrut houses the wire that travels back and forth to pull  
4 the carriage back and forth.

5 Q. Are you familiar with the term "track lighting"? 09:15

6 A. Yes, sir.

7 Q. Is it a similar concept where there's a track and you can  
8 move things back and forth?

9 A. Yes, sir.

10 Q. Okay. So there's a track, basically, going away from each 09:15  
11 of the shooting positions?

12 A. That is correct.

13 Q. In the booth itself, is it just an open space? Or is  
14 there some kind of table or something that a shooter could use  
15 while he's in the lane? 09:15

16 A. In each booth, there is a tabletop so that you can set  
17 your gun or your ammunition or supplies on top. On the left  
18 side is a toggle switch to send it back and forth. On the  
19 right side is a light switch to turn on the lights down the  
20 lane. And behind the tabletop there's a steel fence that 09:15  
21 prevents people from physically walking out.

22 Q. If I can break that down a little slower, and we need to  
23 slow down just a little.

24 A. Yes, sir.

25 Q. You said there's a table in each shooting position, each 09:15

1 shooting lane?

2 A. Yes, sir.

3 Q. In each booth?

4 A. Yes.

5 Q. And on one side -- and I don't remember which side you  
6 indicated -- on the booth, there's a toggle switch; is that  
7 correct?

09:16

8 A. Yes.

9 Q. And you said that sends it down the range. What you're  
10 talking about is that sends the little carrier in the track  
11 that holds the target down the range?

09:16

12 A. Correct. Yes, sir.

13 Q. And then it can bring it back?

14 A. Yes, sir.

15 Q. And then you mentioned that there was a steel barrier or  
16 something in between so that shooters can't walk out into the  
17 firing space; is that correct?

09:16

18 A. Yes, sir.

19 Q. Okay. So if a shooter is standing there, and all these  
20 lanes are laid out to their left and they are looking down the  
21 range, you mentioned that there is a red line on the floor.  
22 Where would the red line be for that person looking down range?

09:16

23 A. If the person is standing inside the booth, the red line  
24 would be behind them because it's in the middle of the floor  
25 that separates the waiting area of the shooting range itself.

09:16



1 Q. So does the red line sort of run that length of all the  
2 lanes?

3 A. Yes, sir.

4 Q. So if all the lanes are in a row, you turn around, and  
5 there's a red -- literally a red line on the floor?

09:16

6 A. Yes, sir.

7 Q. And you said that's a line where the firearms can be  
8 passed. What does that mean?

9 A. The red line designates the area that the firearms can be  
10 held or handled. So we try to encourage all of the guns to be  
11 inside the booth at all times. We want the -- behind the red  
12 line where the benches are, where people wait for their turn to  
13 shoot or with their party, we do not want handling of guns to  
14 take place at the benches, for safety reasons.

09:17

15 Q. So all the guns stay forward of the red line in the  
16 booths, but nonshoot -- people who are waiting to shoot can be  
17 behind the line. And there are benches?

09:17

18 A. Yes, sir.

19 Q. Are there tables or anything back there for them to put  
20 stuff down or anything?

09:17

21 A. No, sir. There is only trash cans, benches, and brooms.

22 Q. The brooms are for what?

23 A. Sweeping brass.

24 Q. And "brass" means what, for folks who are not familiar?

25 A. Mostly guns that are fired at the range are semiautomatic,

09:17

1 and so the spent casing comes out once it's fired, and there's  
2 a collection of brass on the floor. So we try to encourage  
3 people to sweep their brass up to prevent trip hazards.

4 Q. If someone wanted to come in and rent a firearm and shoot  
5 it at LAX Firing Range, is there a check-in process? 09:18

6 A. Yes, sir, there is.

7 Q. What is the check-in process? What is the check-in  
8 process? What's the first step?

9 A. The first thing that happens when they come in, we ask  
10 them if they have been there before. Depending on how they 09:18  
11 answer, we ask them for their ID.

12 If they have been there before, we ask them for their  
13 range ID card.

14 Q. What's a range ID card?

15 A. A range ID card signifies that they have been through the 09:18  
16 process of checking in by reading the rules and regulations and  
17 filling out a waiver for the range.

18 Q. So if they have a range ID card, what does that allow them  
19 to do?

20 A. They no longer have to sign the waiver, as long as the 09:18  
21 range ID card is still valid.

22 Q. So if I'm understanding correctly, if someone gets a range  
23 ID card and they come back, they don't have to fill out all of  
24 the paperwork over again?

25 A. That is correct. 09:18

1 Q. Okay. So what's the next step in the check-in process?

2 Let's say they've never been there before. What happens?

3 A. The first thing we ask them is to surrender their IDs. So  
4 we will take their ID and we will make sure that their ID that  
5 they gave us is the actual person that's giving it to us.

09:19

6 From there, we give them a clipboard that has a  
7 waiver and a laminated sheet of the range rules. We'll ask  
8 them to read it, fill out both sides, and any questions that  
9 they have, they would let us know the questions as they fill  
10 out the form.

09:19

11 Q. You mentioned "range rules." Is it fair to say LAX Firing  
12 Range is a place where there are a lot of firearms inside?

13 A. Yes, sir, it is.

14 Q. Is this a controlled environment?

15 A. Yes, sir, it is.

09:19

16 Q. So are any violations of the rules, or any odd behavior,  
17 something that you would notice and take note of and have to  
18 watch out for as an employee inside the range?

19 A. Yes, sir.

20 Q. Did you mention that there's a door to the outside? Even  
21 to get in, you have to get buzzed in?

09:19

22 A. That is correct. Yes, sir.

23 Q. And why is that?

24 A. For security purposes, we try to regulate who comes inside  
25 the range. We don't want to get instant access to where the

09:19

1 guns are stored.

2 Q. And the other set of doors you mentioned a moment ago to  
3 get from the showroom to the firing range, are those also  
4 monitored or controlled by staff?

5 A. Yes, sir, they are.

09:20

6 Q. Okay. So what's the next step in the check-in process?  
7 They check in. You give them the clipboard. They read the  
8 rules. Do you make them verbally acknowledge the rules, or how  
9 does that -- what happens with the rules statement that you  
10 show them?

09:20

11 A. If they have a question, then we'll answer the question,  
12 but there is no verbal acknowledgement. They have to  
13 physically initial each paragraph on one side. And on the other  
14 side, there is a series of questions that they have to  
15 answer that would -- it would give us the immediate  
16 notification if they are a prohibited person to be in  
17 possession of a gun, based on three questions we have on the  
18 form.

09:20

19 After that is all of their regular standard  
20 information: Their name, birthday, address, phone number,  
21 email, date and time, and their signature.

09:20

22 Q. Okay. They fill out the paperwork. They sign the form.  
23 What happens next?

24 A. At that point, we will file a range ID card, attach it to  
25 their ID. We will assign them to a lane. After we assign them

09:20

1 to a lane, we'll ask them what they would like to shoot, if  
2 they've ever shot it before. If not, we'll give them a  
3 demonstration on how to do it. We'll ask them what --

4 Q. Go a little slower, please.

5 A. Okay. Once we have the paperwork filled out, we will ask 09:21  
6 them what would they like to shoot, if they've shot it before.  
7 If they haven't, we'll give them a demonstration, for safety  
8 reasons. We'll ask them how much ammunition they'd like and  
9 how many targets they'd like. And then from there, we will  
10 provide them with earmuffs and eye protection and tell them 09:21  
11 what lane they are on, and then we'll send them out to the  
12 range itself.

13 Q. Now, is everybody required to wear ear and eye protection?

14 A. Yes, sir.

15 Q. As part of the rules for being able to fire in the range? 09:21

16 A. Yes, sir.

17 Q. And is that true even if you bring your own firearm and  
18 you want to shoot your own firearm?

19 A. Yes, sir.

20 Q. Okay. You give them the instructions. You show them how 09:21  
21 to use the firearm, if they've never used it before.

22 The targets you hand them, they have to pay for  
23 those?

24 A. Yes, sir.

25 Q. If they're renting guns, you mentioned that they have to 09:21

1 buy your ammunition?

2 A. Yes, sir.

3 Q. So you hand them the boxes?

4 A. Yes, sir.

5 Q. Based on how many they say they want?

09:21

6 A. Yes, sir.

7 Q. Okay. You hand them that stuff, then where does the  
8 customer go from there?

9 A. From there, we will tell them to step in another check-in,  
10 like the table that's in a hallway before you get to the range  
11 itself. That's when we get everything together in a box. We  
12 will give them a box to carry out with the earmuffs and make  
13 sure they put that on before they go to the range itself. So  
14 from that point, they actually go to the range.

09:22

15 Q. And they go through those other doors and step out onto  
16 the firing line; is that right?

09:22

17 A. Yes, sir.

18 Q. Now, you mentioned a moment ago that at the check-in you  
19 assign them a lane. And you mentioned earlier that each of the  
20 lanes has numbers. Do I understand you to say, *Okay. You guys*  
21 *will be firing today in Lane 3*, for example, and that's where  
22 the customer is supposed to go to shoot the firearms?

09:22

23 A. Yes, sir.

24 Q. Are customers allowed to bounce around to any lane they  
25 want?

09:22

1 A. No, sir.

2 Q. Okay. So the customer then goes inside. And I suppose if  
3 they come in the door they see that red line on the floor  
4 running to the left?

5 A. Yes, sir.

09:22

6 Q. And then they see all the rows of the lanes to their left;  
7 is that correct?

8 A. Yes, sir.

9 Q. All right. And they proceed down. And what typically  
10 happens as they're walking down the lane? Do they hold onto  
11 the firearms, or do most people put them down? What happens?

09:23

12 A. Usually what happens is they would proceed straight to the  
13 lane that they were assigned. And once they reach that lane,  
14 they could utilize a tabletop to organize their stuff that they  
15 have inside the booth.

09:23

16 Q. When you say "their stuff," what stuff are you talking  
17 about?

18 A. We give them a bucket that maintains -- that usually has  
19 the ammunition and the targets in it, as well as the firearm.  
20 If they have a long gun, they would carry that in their hand;  
21 it won't fit in the bucket.

09:23

22 Q. Now, you mentioned, most of the firearms are  
23 semiautomatic, and that each time they fire, the piece of the  
24 spent round or the cartridge falls out, the brass falls on the  
25 floor. In a semiautomatic firearm, how is the ammunition

09:23

1 loaded in?

2 A. A semiautomatic firearm, the ammunition is loaded into a  
3 magazine. So you would load the magazine and insert the  
4 magazine itself into the firearm.

5 Q. Now, does the loading of the magazine happen out in the  
6 showroom, or does that happen on the range?

09:24

7 A. It happens strictly on the range.

8 Q. Okay. So once the customer comes down and puts his or her  
9 stuff down on the counter in the bucket, that's where they  
10 would proceed to load the magazines up?

09:24

11 A. That's correct. Yes, sir.

12 Q. And then from that point, they take their targets, I take  
13 it, and clip them onto the track?

14 A. Yes, sir. There is a steel target hanger that has two  
15 clips that come down. So you clip the target into the hanger.  
16 And then from there, you can utilize the toggle switch to send  
17 it back and forth.

09:24

18 Q. Now, can you send the target as close away from you or as  
19 far away from you as you like, or is there only strict  
20 positions?

09:24

21 A. Anywhere from 0 to 25 yards.

22 Q. At that point, let's say someone has loaded their  
23 magazines and they have affixed their target and they are ready  
24 to begin firing, and they're in a small group. Is everybody  
25 allowed to stand in the firing lane while one person is

09:24



1 shooting?

2 A. There's nothing that says they can't. There's so much  
3 space, though. So usually what happens when they're in a group  
4 is, like, one person can stand relatively close enough to give  
5 instruction, but you can't put more than, say, three or four 09:25  
6 people inside one booth at the same time while firing because  
7 the person on the right will get hit with the spent casings  
8 coming out of the gun.

9 Q. And if there is a small amount of room, is it also common  
10 for the one person who is actually doing the shooting to be in 09:25  
11 the booth, and the other people he or she is with be maybe back  
12 behind the red line? I don't know. Somewhere away from that  
13 spot?

14 A. Yes.

15 Q. Can multiple people all fire at the same time if two 09:25  
16 people can fit side by side and they both have a firearm?

17 A. No, sir.

18 Q. That's prohibited by the rules?

19 A. Yes, sir.

20 Q. So after this process is over -- by the way, is there a 09:25  
21 time limit for how long they can take?

22 A. No, sir.

23 Q. There's no minimum and maximum time?

24 A. No, sir.

25 Q. How is the fee charged? Is it per use, or -- 09:25

1 A. The range fee is per person per hour. The rental is a  
2 flat rate, which they can exchange for other guns without  
3 paying additional fees. Ammunition is per box or bag, whatever  
4 they get, and targets are sold individually.

5 Q. Okay. If an individual is firing a weapon and then runs 09:26  
6 out of ammo and wants to get some more, what do they do?

7 A. They usually just return to the front counter and ask for  
8 more ammunition.

9 Q. Can they leave their bucket with their weapon and the  
10 magazine on the lane where they are shooting? 09:26

11 A. Yes, sir.

12 Q. So they don't have to give up the lane and get reassigned  
13 a new lane?

14 A. Yes, sir.

15 Q. Okay. Once someone is done shooting, what do they do? Do 09:26  
16 they come out and bring the firearms back to you?

17 A. Yes, sir. Anytime they come off the range -- minus just  
18 to come use the restroom or get more ammunition or another  
19 target -- they have to bring the gun out, completely unload it  
20 inside the bucket. At which time once they come off the range, 09:27  
21 we take it from them.

22 Q. Obviously, you take it and check to make sure it's  
23 cleared; there's nothing in it?

24 A. Correct.

25 Q. And you return it to the rack, I take it? 09:27

1 A. Yes.

2 Q. And then at that point, you mentioned earlier that they  
3 are required to submit ID. Is that the point at which if  
4 they're done shooting, you return the ID, you collect the fee  
5 that you charge them, and they pay?

09:27

6 A. Yes. Well, we won't give the ID back until they pay. So  
7 what we do is we actually run like a tab system, like a  
8 restaurant. Once we have the total, we will tell them what  
9 their total is. So when they pay us, we give them back the ID  
10 at that point.

09:27

11 Q. And at that point, they are free to go about their  
12 business?

13 A. Yes, sir.

14 Q. You mentioned you have to buzz people in because it's a  
15 very controlled environment. Do you have to buzz them out?

09:27

16 A. No, sir.

17 Q. There's a push bar on the door and you can exit?

18 A. Yes, sir.

19 Q. Sir, were you working at the LAX Firing Range on  
20 September 10, 2012?

09:27

21 A. Yes, sir, I was.

22 Q. And did something interesting happen that day?

23 A. Yes, sir, it did.

24 Q. What happened?

25 A. One of the things that I personally look for is things

09:28

1 that are out of the ordinary with customers. The reason why is  
2 for suicide prevention.

3 Q. What do you mean by that?

4 A. Suicide at a range that rents guns is pretty common  
5 because it gives somebody that does not own a gun instant 09:28  
6 access to a gun. So it's one of the things that stands out, as  
7 far as suicides that take place at gun ranges. The person that  
8 does it usually does not own a gun, and the only way to get  
9 instant access to a gun is at a firing range. So I'm always  
10 mindful of that, and things that stand out, catches my 09:28  
11 attention.

12 Q. And when something catches your attention, do you pay more  
13 attention to it? Or do you say, *Oh, that was strange*, and just  
14 tell somebody else and --

15 A. It depends on -- it depends on what it is that catches my 09:28  
16 attention. For instance, we did have a suicide recently, to  
17 where two people came in that had the same address on their  
18 driver's license, but they did not -- they weren't related.  
19 They didn't look like they were related, or anything else. And  
20 as it turns out, they were both -- had been adjudicated 09:29  
21 mentally defective and were living inside of an assisted living  
22 facility, so the common addresses on the driver's license stood  
23 out, but it didn't raise enough of a red flag to us not to  
24 allow them access on the range.

25 So that's one of the things that we look for, is 09:29

1 things that actually stand out, that don't mix together.

2 Q. So when you say you're looking at things that stand out or  
3 are unusual, you're not just physically watching people;  
4 although, you do some of that; is that correct?

5 A. Yes, sir.

09:29

6 Q. You are also looking at the information, the IDs, and  
7 things they are providing you?

8 A. Yes, sir.

9 Q. Okay. We started this part of the testimony when I asked  
10 you did something interesting happen on September 10, 2012.  
11 What happened that caught your attention on that day?

09:29

12 A. There was three people that arrived at the range that did  
13 not blend or mix in any way whatsoever.

14 Q. What do you mean by that?

15 A. There is an older Middle Eastern guy, and he was  
16 accompanied by two younger guys, one Hispanic and one Asian, or  
17 what appeared to be Asian.

09:30

18 Q. And when you say they were "younger guys," approximately  
19 how old were the younger guys?

20 A. The younger guys looked to be in their very early 20s, if  
21 20, and the gentleman that accompanied them looked to be maybe  
22 40 or older.

09:30

23 Q. And why did that stand out when you first observed these  
24 people?

25 A. When they first walked in, I asked them for their IDs.

09:30

1 And once I had their IDs, I looked at their addresses, which is  
2 something I always do, and their addresses were from far away.  
3 They weren't from the Los Angeles area.

4 Q. Do you remember what area they were from?

5 A. Upland, Ontario, or Rancho Cucamonga, or somewhere in the 09:30  
6 I.E.

7 Q. Over here in the Inland Empire?

8 A. Yes, sir.

9 Q. And why was that unusual?

10 A. It's a great distance to travel to go to a shooting range. 09:31

11 Q. Are you aware of whether there are other shooting ranges  
12 in the area that someone could have gone to that is closer?

13 A. Yes, sir. There is a range in Ontario that's not too far  
14 from the 10 Freeway, the 10 and the 15.

15 Q. So it drew your attention, when you looked at their IDs, 09:31  
16 that these folks were from very far away and they had come all  
17 the way out to LAX Firing Range?

18 A. Yes, sir.

19 Q. And it drew your attention because two of the individuals,  
20 I believe you said a male Hispanic and an Asian? 09:31

21 A. Yes, sir.

22 Q. Or someone who appeared to be Asian, sorry, were younger  
23 than the person you said was Middle Eastern who appeared to be  
24 40ish?

25 A. Yes, sir. 09:31

1 Q. Did these people -- were they shopping? What were they  
2 doing there?

3 A. They weren't shopping. When they arrived at the range, I  
4 asked them if, you know, if they had been there before, and  
5 they said no. And I asked them if they wanted to shoot, and 09:31  
6 they said yes, so I asked them for their IDs. Once I had their  
7 IDs, I gave them clipboards. And usually when groups arrive  
8 together, there's kind of like a sense of camaraderie between  
9 the group, like they'll talk to each other, they'll laugh or  
10 joke or tell stories. This was kind of weird because they all 09:32  
11 kind of like separated, like, right away.

12 Q. When you say, "right away," right away after what?

13 A. After I gave them the clipboards to fill out the forms,  
14 and instead of them, like, looking at each other's form or IDs  
15 and, you know, playing with each other or joking with each 09:32  
16 other, it just seemed kind of weird that they -- they just  
17 were, like, were in their own individual zone.

18 Q. Now, when you said there's a sense of camaraderie, is it  
19 often the case that people who have never fired a fire arm are  
20 coming to LAX Firing Range for the first time to see and shoot 09:32  
21 firearms?

22 A. Yes, sir. There's a sense of enthusiasm that takes place  
23 when people walk in for the first time because it's not  
24 everywhere you can go and you see, like, 60 or 70 nice guns on  
25 the wall. 09:32

1           So for us, one of the things that we look for is the  
2 person's enthusiasm when they walk in. If they walk in and  
3 they could care less what's on the wall, that's a red flag for  
4 us that they might be depressed or there might be some other  
5 issue. When they walk in and they're like, *Oh, my goodness.*  
6 *Look at the wall.* It's one of those things that we're, like,  
7 *Okay. So they're here to have some fun.*

09:33

8           THE COURT: You need to -- you need to slow down,  
9 please.

10           THE WITNESS: Yes, ma'am.

09:33

11 BY MR. GRIGG:

12 Q. Now, you mentioned seeing 60 or 70 guns on the wall, and  
13 I'm sorry I didn't ask you to describe a little bit more the  
14 showroom and the inventory.

15           Do you display the firearms that are on rent on the  
16 wall.

09:33

17 A. Yes, sir.

18 Q. Do you sell firearms?

19 A. To law enforcement only.

20 Q. To law enforcement only? Are there other, like, glass  
21 cases, or something like that, that have other firearms for  
22 sale?

09:33

23 A. No, sir.

24 Q. What else is on the walls?

25 A. On the walls behind the employee area will be where all

09:33



1 the firearms are. Across the showroom on all four walls would  
2 be merchandise that's displayed.

3 Q. And in this situation, you mentioned that on  
4 September 10th, 2012 these three individuals who you described,  
5 they came in, they checked in, they provided you their IDs; is  
6 that correct? 09:33

7 A. Yes, sir.

8 Q. And you handed them the clipboards with the paperwork and  
9 the rules, and then they sort of spread out to different areas  
10 inside the showroom? Is that what you're saying? 09:34

11 A. Yes, sir.

12 Q. And what happened from there? Did they fill out the  
13 paperwork?

14 A. Yes, sir. The paperwork was filled out and returned back  
15 to me. 09:34

16 Q. And then what did they do?

17 A. From there, there's a couple of other things that we were  
18 -- taking care of other customers. I believe I was the only  
19 one at the counter at the time. Once I was ready to help them,  
20 I directed them to the hallway where we actually get the stuff  
21 that they need for the range, and I asked them what would they  
22 like to shoot. They said a rifle. So I had to get them a  
23 secondary rifle waiver release to fill out, so I had to  
24 retrieve the forms, the second set of forms, give it to them to  
25 fill out. And once they filled that out, then we proceeded to 09:34

1 get them checked in.

2 Q. So the initial set of forms that you gave them applied to  
3 handguns?

4 A. The initial set applies to just a general release of  
5 liability for the range. Because of the impact that rifles  
6 have on the range itself, we try to indemnify ourselves so that  
7 we could charge them if they damage the range by using the  
8 rifle.

09:35

9 Q. So you have to have them fill out a separate set of  
10 paperwork because the rifles can do more damage, in most cases,  
11 than the firearms?

09:35

12 A. Yes, sir.

13 Q. Did they fill out that paperwork?

14 A. Yes, sir.

15 Q. And did they bring it back to you?

09:35

16 A. Yes, sir.

17 Q. What happened then?

18 A. I checked to make sure everything was filled out, I  
19 initialled it, and then filed the papers.

20 Q. Okay. And what did the customers do?

09:35

21 A. They waited for me to return to get the supplies that they  
22 wanted.

23 Q. Okay. And what was the firearm that they wanted to shoot  
24 that caused you to have to have them fill out the rifle  
25 paperwork?

09:35

1 A. It was an AR15-style rifle.

2 Q. Now, an AR15-style rifle, for most folks who don't know  
3 what that is, is that a short? Long? What does it look like?  
4 What kind of firearm is it?

5 A. An AR15 rifle is very similar to what an M16 military 09:36  
6 rifle would be. Very few different characteristics. But for  
7 civilian terms, we refer to it as an AR15 because it does not  
8 possess the ability to have multi-verse trigger system.

9 Q. Mr. Avery, in the small bookcase to your right there is a  
10 binder with your name on it. Can you place it on the table in 09:36  
11 front of you.

12 All right. Can you open it and please take a look  
13 through the exhibits that are inside. Don't describe them,  
14 just tell me when you're done.

15 A. I'm done. 09:36

16 Q. Directing your attention to Exhibit 108 in your binder,  
17 have you reviewed that exhibit before?

18 A. Yes, sir, I have.

19 Q. Do you recognize the item depicted in that exhibit?

20 A. Yes, sir, I do. 09:37

21 Q. Now, for the record, this is a single-page -- sorry -- a  
22 two-page exhibit that appears to depict an item.

23 What is the item depicted in this exhibit?

24 A. It's an AR15 rifle.

25 Q. And do you recognize this particular rifle? 09:37

1 A. Yes, sir, I do.

2 Q. How do you recognize it?

3 A. It is one of our range rentals.

4 Q. And is this the type of weapon, or is it the weapon that  
5 these individuals rented on September 10, 2012?

09:37

6 A. Yes, sir, it is.

7 MR. GRIGG: Your Honor, the Government moves to admit  
8 Government's Exhibit -- it's been previously marked 108.

9 THE COURT: Any objection?

10 MR. LARSEN: No, Your Honor.

09:37

11 MR. THOMAS: No, Your Honor.

12 THE COURT: Thank you. Exhibit 108 is ordered  
13 admitted.

14 You may publish.

15 (Government's Exhibit No. 108 admitted.)

09:37

16 BY MR. GRIGG:

17 Q. Sir, do you see the image displayed on the screen in front  
18 of you?

19 A. Yes, sir.

20 Q. Is that Exhibit 108, slightly zoomed in?

09:38

21 A. Yes, sir.

22 Q. And is that, for the record, page 1 of Exhibit 108?

23 A. Yes, sir.

24 Q. What are we looking at?

25 A. We're looking at an AR15 rifle.

09:38

1 Q. Okay. What part of the rifle is on the left side of the  
2 image, for people who are not familiar with firearms?

3 A. The butt stock end is on the left.

4 Q. And is that a handgrip in the middle?

5 A. Yes, sir, it is.

09:38

6 Q. What is that small block above the handgrip at the top of  
7 the rifle?

8 A. A site.

9 Q. And in front of the handgrip there appears to be, at this  
10 spot right here, an opening. What is that?

09:38

11 A. That's the magazine well.

12 Q. And if the butt stock is on the left, I take it the  
13 dangerous end is on the right?

14 A. Yes, sir.

15 Q. And that's called what?

09:39

16 A. The muzzle.

17 Q. Directing your attention to what's displayed on the screen  
18 here. This is page 2 of Exhibit 108, for the record.

19 You mentioned that there's a site above the handgrip,  
20 the pistol grip part, and I was referring to this block here.  
21 There's also something to the right near the front of the  
22 firearm, and I'm referring to this item circled here.

09:39

23 What is that?

24 A. That's the front site post.

25 Q. So for people not familiar with firearms, can you briefly

09:39

1 describe how the front site and the rear site work --

2 A. Yes, sir.

3 Q. -- how one would use them?

4 A. The front site and rear site have to be aligned equal in  
5 height on the same line in reference to the target in order to  
6 pinpoint where you want to shoot the gun. So it's the  
7 referencing part to actually be able to shoot accurately.

8 Q. So if you're looking down the rifle, there's the rear site  
9 is closest to your face, the front site is farthest away, and  
10 you line them up and you get all of that sort of lined up with  
11 your target before you fire.

12 Is that generally how it works?

13 A. Yes, sir.

14 Q. All right. Sir, the individuals on September 10th, 2012,  
15 rented this weapon. You described in the check-in process that  
16 they had to complete some paperwork. Do you recall talking  
17 about that?

18 A. Yes, sir.

19 Q. Directing your attention to what's been marked as  
20 Exhibit 106 in your binder, please.

21 Do you recognize Exhibit 106?

22 A. Yes, sir, I do.

23 Q. What is that document?

24 A. It's our standard Participant Agreement Release and  
25 Acknowledgement of Risk form.

1 Q. And this is a three-page document; is that correct?

2 A. No, sir. It's a two-sided document.

3 Q. Two-sided document. And in your exhibit, are both sides  
4 of the form displayed?

5 A. Yes, sir.

09:41

6 Q. And then there is a third page. What is the third page?

7 A. The third page is the additional form to fire rifles on  
8 the range.

9 Q. And is that the rifle waiver that we talked about earlier?

10 A. Yes, sir.

09:41

11 Q. And sir, is this one of the -- is this Exhibit 106 one of  
12 the sets of paperwork -- actually, two sets of paperwork that  
13 one of the individuals that you discussed earlier filled out in  
14 the firing range in order to be able to shoot before they  
15 rented that AR15?

09:41

16 A. Yes, sir.

17 Q. And sir, directing your attention to the second page of  
18 Exhibit 106, what is the name of the person who filled out this  
19 form?

20 A. Ralph DeLeon.

09:41

21 Q. Now, there appears to be printed words and then  
22 handwriting. For example, the first page has a series of lines  
23 and initials, and then there is handwriting on the second page.  
24 And then on the rifle addendum, the extra rifle paperwork,  
25 there are also initials and handwriting. Is that the staff

09:42

1 filling out that paper, or is that the customer filling out  
2 that paper?

3 A. No, sir. Each of these forms have to be filed out by the  
4 customer.

5 Q. So these are the forms, is it correct, that Ralph DeLeon  
6 filled out on September 10th, 2012?

09:42

7 A. Yes, sir.

8 MR. GRIGG: And the Government, at this point, moves  
9 to admit Exhibit 106 into evidence, Your Honor.

10 THE COURT: Any objection to 106?

09:42

11 MR. LARSEN: No, Your Honor.

12 MR. THOMAS: No, Your Honor.

13 THE COURT: Thank you. 106 is ordered admitted.  
14 You may publish.

15 (Government's Exhibit No. 106 admitted.)

09:42

16 BY MR. GRIGG:

17 Q. Sir, directing your attention to the screen, I will try  
18 and assist because this document is forced to appear all on one  
19 page.

20 I'm going to focus your attention at the top part  
21 here. This is a zoom-in of the participant agreement document  
22 that you referenced earlier. It's the first set of paperwork  
23 you hand someone, correct?

09:42

24 A. Yes, sir.

25 Q. And I apologize for not being able to zoom in squarely

09:43



1 here. I'm trying to do a better job.

2 And these things have rules, and after each rule  
3 there are spaces for the customer to initial, that we talked  
4 about a moment ago; is that correct?

5 A. Yes, sir.

09:43

6 Q. So these initials that appear on this document, "RD," are  
7 all filed out by the customer; is that correct?

8 A. Yes, sir.

9 Q. Directing your attention to the bottom right corner of  
10 Exhibit 106, page 1, there's also an item here that says,  
11 "Employee initials," and there appears to be handwriting on  
12 there.

09:43

13 Is that the customer's handwriting?

14 A. No, sir, that is my writing.

15 Q. So you initialed this form when Mr. DeLeon came to rent  
16 firearms at LAX Firing Range on September 10th; is that  
17 correct?

09:43

18 A. Yes, sir.

19 Q. Mr. Avery, for reasons of privacy, I'm going to put up  
20 page 2 of Exhibit 106, but I'm going to cover some of the  
21 information on it because it's personal information. But it's  
22 otherwise -- you can tell us whether it's the same as page 2 of  
23 Exhibit 106.

09:44

24 A. Yes, sir, it is.

25 Q. You mentioned a moment ago that the initial paperwork is a

09:44

1 two-sided document; is that correct?

2 A. Yes, sir.

3 Q. Which side of the paper is this page 2?

4 A. They don't have numbers. The first page you're showing,  
5 they are just photocopied back to back. So we don't say this  
6 is page 1 or page 2. This is just one complete form.

09:44

7 Q. So is this -- this, what we're looking at here, would that  
8 be on the back side of the page we looked at a moment ago?

9 A. Yes, sir, it would.

10 Q. And directing your attention to this area on the right,  
11 you mentioned before that you noticed when they signed in that  
12 folks were from the Inland Empire; is that correct?

09:45

13 A. Yes, sir.

14 Q. And on this document, Mr. DeLeon has filled it out  
15 indicating, *City: Ontario, California*, correct?

09:45

16 A. Yes, sir.

17 Q. And he has indicated his cell phone number is  
18 (626) 589-2068; is that correct?

19 A. Yes, sir.

20 Q. Now, underneath that, there is the date and the time. Is  
21 the customer required to place the time on the document when  
22 they fill out the waiver?

09:45

23 A. Yes, sir.

24 Q. And at the bottom of this page, employee initials, is that  
25 your initial there?

09:46

1 A. Yes, sir.

2 Q. Is that "N" and a circle?

3 A. Yes, sir.

4 Q. I'm going to turn your attention back to the monitor, sir.

5           Displaying what is Exhibit 106, page 3, let me see if 09:46  
6 the highlighter actually selects the portion here. For some  
7 reason, it's panning over. It doesn't like the right side of  
8 the page. So without getting the papers shuffled, I'm going to  
9 place this on the overhead.

10           Now, what's displayed on the screen, is that the 09:47  
11 third page in Exhibit 106?

12 A. Yes, sir.

13 Q. And you mentioned that this is the paperwork as it  
14 indicates for high-powered rifles; is that correct?

15 A. Yes, sir. 09:47

16 Q. And on the right side of the page, again with all the  
17 rules and instructions, the customer, Mr. DeLeon, initialled  
18 each and every one of those spots; is that correct?

19 A. Yes, sir.

20 Q. And then on the bottom he signed the form; is that right? 09:47

21 A. Yes, sir.

22 Q. Now, on this one, the date and time are different than the  
23 date and time we just saw. The date is the same,  
24 September 10th, 2012, but whereas on the initial form the  
25 place, I think, it was 317 -- and I don't mean to misspeak. 09:48

1 Yes, 3:17 p.m. This is 3:21. Is that because you had to go  
2 get the extra firearm -- the extra rifle paperwork when he told  
3 you guys that he wanted to rent an AR15?

4 A. Yes, sir.

5 Q. Sir, directing your attention to the exhibit in your  
6 binder, 107.

7 Have you seen that document before?

8 A. Yes, sir.

9 Q. What is that document?

10 A. It's a Participant Agreement Release and Acknowledgement  
11 of Risk form.

12 Q. And turning to the second page, is it basically in the  
13 same order as the one for Mr. DeLeon we just saw?

14 A. Yes, sir.

15 Q. And then turning to the third page, is there also a  
16 high-powered rifle addendum?

17 A. Yes, sir.

18 Q. In the bottom of each of these three pages, are your  
19 initials on each of the three pages?

20 A. Yes, sir.

21 Q. And is this a form filled out by the other individual who  
22 was with Mr. DeLeon, the other young individual who was with  
23 Mr. DeLeon, on September 10th, 2012?

24 A. Yes, sir.

25 Q. Directing your attention to the second page of this

09:48

09:48

09:48

09:49

09:49

1 exhibit, whose form -- whose waiver forms are these?

2 A. This one is for a Miguel Santana.

3 MR. GRIGG: Your Honor, at this point, the Government  
4 moves to admit into evidence Government's Exhibit 107.

5 THE COURT: Any objection? 09:49

6 MR. LARSEN: No, Your Honor.

7 MR. THOMAS: No, Your Honor.

8 THE COURT: Thank you. Exhibit 107 is ordered  
9 admitted.

10 You may publish. 09:49

11 (Government's Exhibit No. 107 admitted.)

12 BY MR. GRIGG:

13 Q. Displaying page 1 of Exhibit 107.

14 Mr. Avery, this is the standard paperwork for the  
15 initial round of paperwork that the customer filled out? 09:49

16 A. Yes, sir.

17 Q. And on the right side of this page a series of initials by  
18 Mr. Santana?

19 A. Yes, sir.

20 Q. At the bottom it's, in the copy cut off, but where the  
21 word -- below the line and along the words that say "employee  
22 initials," there appears to be, at the top of the circle, is  
23 that -- what is that?

24 A. That is my initial.

25 Q. And again, for privacy reasons, I'm going to place page 2 09:50

1 of this on the overhead display with a certain passage that's  
2 been blocked out.

3 Now, similar with Mr. DeLeon's forms in Exhibit 106,  
4 this page 2, is that on the reverse side or the back side of  
5 the page we just looked at, page 1?

09:51

6 A. Yes, sir.

7 Q. And there's a series of check boxes answering the three  
8 questions you indicated were automatic disqualifiers?

9 A. Yes, sir.

10 Q. And then in the center of the page is this Mr. Santana's  
11 information he filled out, signed, and so on?

09:51

12 A. Yes, sir.

13 Q. At the bottom of this page in a circle, is that your  
14 initials?

15 A. Yes, sir.

09:51

16 Q. Directing your attention back to the monitor in front of  
17 you. This is page 3 of Exhibit 107; is that correct?

18 A. Yes, sir.

19 Q. And is this Mr. Santana's agreement waiver for high-  
20 powered rifles?

09:52

21 A. Yes, sir.

22 Q. Again, on the right side of the document, page 3, next to  
23 each statement about repairs and the cost, and so on,  
24 Mr. Santana has placed his initials; is that correct?

25 A. Yes, sir.

09:52

1 Q. Let's move a little quicker here.

2 Mr. Santana signed the form at the bottom; is that  
3 correct?

4 A. Yes, sir.

5 Q. On the date September 10, 2012, at 3:20 p.m.; is that  
6 correct?

7 A. Yes, sir.

8 Q. And those are your initials down at the bottom?

9 A. Yes, it is.

10 Q. Now, before coming to court today, did you have an  
11 opportunity to review a video of events occurring within LAX  
12 Firing Range?

13 A. No, sir.

14 Q. Did you review a video earlier this morning with events  
15 occurring in the firing range?

16 A. Yes, sir.

17 Q. And did you review that video from beginning to end?

18 A. Yes, sir.

19 Q. And when reviewing that video, did you see anybody that  
20 you recognized?

21 A. Yes, sir.

22 Q. Who did you see?

23 A. I saw Ralph DeLeon in the video.

24 Q. And who else did you see?

25 A. Miguel Santana.

09:52

09:52

09:53

09:53

09:53

1 Q. Now, when you say you saw Ralph DeLeon and you saw Miguel  
2 Santana, did you recognize the people in the video?

3 A. DeLeon I did because of the glasses.

4 Q. And you remembered seeing those individuals?

5 A. Yes, sir.

09:53

6 Q. You're in the video yourself; is that correct?

7 A. Yes, sir, I am.

8 Q. And you watched that video from beginning to end; is that  
9 correct?

10 A. Yes, sir.

09:53

11 Q. Now, does that video depict the three individuals you  
12 talked about coming into LAX Firing Range as it happened on  
13 September 10, 2012?

14 A. Yes, sir, it does.

15 Q. And does it depict the events that you've described so  
16 far, the filling out the paperwork?

09:54

17 A. Yes, sir.

18 Q. Does it depict them reviewing the paperwork and bringing  
19 it back to you?

20 A. Yes, sir, it does.

09:54

21 Q. Does it depict them renting the AR15?

22 A. Yes, sir, it does.

23 Q. Does it depict them heading into the firing line and  
24 firing that weapon?

25 A. Yes, it does.

09:54



1 Q. Is that the only firearm that they fired that day?

2 A. No, sir, it's not.

3 Q. What else did they fire?

4 A. Once they finished with the rifle, they rented a Glock 17  
5 pistol.

09:54

6 Q. Sir, directing your attention to Exhibit 109 in the binder  
7 before you, do you recognize that item?

8 A. Yes, sir, I do.

9 Q. What is that?

10 A. That's a Glock 17, 9mm pistol that we rent on range.

09:54

11 Q. This is one of your rental firearms?

12 A. Yes, sir, it is.

13 Q. Is this the firearm that they rent -- is it the same auto  
14 firearm that they rented on September 10th?

15 A. Yes, sir.

09:55

16 MR. GRIGG: Your Honor, at this point the Government  
17 moves to admit the exhibit -- and forgive me, Your Honor. I  
18 haven't been saying "previously marked," but the exhibit  
19 previously marked as 109 into evidence.

20 THE COURT: All right. Any objection?

09:55

21 MR. LARSEN: No, Your Honor.

22 MR. THOMAS: No, Your Honor.

23 THE COURT: Thank you. Exhibit 109 is ordered  
24 admitted.

25 You may publish.

09:55

1 (Government's Exhibit No. 109 admitted.)

2 BY MR. GRIGG:

3 Q. Sir, looking at this, can you describe what this picture  
4 shows on the screen, for the jury who may not be familiar with  
5 handguns?

09:55

6 A. It's a semiautomatic Glock 17, 9mm pistol.

7 Q. Now, previously we described -- we talked about  
8 semiautomatics have magazines. Where are magazines usually  
9 loaded in handguns?

10 A. Inside of the grip itself.

09:55

11 Q. So if I were to draw a circle at the bottom of the grip  
12 here around this little object sticking out at the bottom, what  
13 is that object there?

14 A. That's the floor plate for the magazine.

15 Q. So the floor plate, is that the bottom of the magazine,  
16 and the magazine is the small column, and that's the bottom of  
17 it?

09:56

18 A. Yes, sir.

19 Q. So as depicted in this photograph, the magazine is  
20 actually in this firearm right now?

09:56

21 A. Yes, sir.

22 Q. Now, in this firearm, it appears to be the back end on the  
23 left of the screen, correct?

24 A. Yes, sir.

25 Q. And there appears to be a small little object sticking up,

09:56

1 in my poorly drawn finger move here, right at the back end.

2 What is that?

3 A. That's the rear site.

4 Q. And then towards the right of the firearm there appears to  
5 be this tiny little thing in front. What is that?

09:56

6 A. That's the front site.

7 Q. So is it the case, Mr. Avery, that just like the rifle,  
8 except in a much smaller scale, you look down the front site  
9 and the rear site on the firearm, and you line those up with  
10 the target and it works the same way?

09:57

11 A. Yes, sir.

12 Q. Now, I notice that this firearm appears to be -- the top  
13 of the firearm appears to be sticking out past the handgrip on  
14 the left.

15 Do you see that?

09:57

16 A. Yes, sir.

17 Q. And then I also notice that there appears to be what I'll  
18 just call the "barrel" sticking out on the right, sort of  
19 exposed.

20 Do you see that?

09:57

21 A. Yes, sir.

22 Q. Why is this top part back in the front of the handgun  
23 exposed like that? Is that normally the way it looks?

24 A. The pistol in the condition as pictured, the pistol is in  
25 -- we call it slide-locked to the rear. When the pistol is

09:57

1 like that, it's not capable of being fired. So for us for  
2 safety reasons, that's how we dispatch the guns; that's how we  
3 want them returned to us.

4 So when the slide is back, the top piece that's  
5 retracted back to the left is called the slide.

09:57

6 Q. If I can slow you down just a little.

7 This top piece that's retracted back to the left,  
8 that's the item that I've circled here, correct?

9 A. Yes.

10 Q. So that's pulled back and locked into place, correct?

09:58

11 A. Yes.

12 Q. And is that why the barrel is now sticking out?

13 A. Yes, sir.

14 Q. Is that how it looks when its being fired?

15 A. No, sir.

09:58

16 Q. Now, I also notice that there's this -- it's hard to see  
17 on this screen in this photograph, but there is a little hole  
18 or well there. What is that?

19 A. That's an ejection port.

20 Q. What gets ejected out of the ejection port?

09:58

21 A. Spent casings from the chamber.

22 Q. So when you told the jury earlier about firearms and when  
23 you fire a shot a little piece of the shell casing flies out,  
24 this is the spot where it actually ejects, the ejection port?

25 A. Yes, sir.

09:58

1 Q. So you mentioned that Mr. DeLeon and Mr. Santana -- and I  
2 take it this other individual who was with them, the older  
3 male, they rented the handgun as well, correct?

4 A. Yes, sir.

5 Q. And did they take that into the firing line?

09:58

6 A. Yes, sir.

7 Q. And did they fire that on September 10th, 2012?

8 A. Yes, sir.

9 Q. And then did they -- when they were done firing the AR15,  
10 did they bring that back to the staff at LAX Firing Range?

09:59

11 A. Yes, sir.

12 Q. Did they turn that back in?

13 A. Yes, sir.

14 Q. When they were done bringing this handgun back, as  
15 depicted in 109, did they bring that back to the staff?

09:59

16 A. Yes, sir.

17 Q. And then did they complete the transaction? Did they fill  
18 out the forms or complete the paperwork, pay for the fees, and  
19 get their ID cards back?

20 A. Yes, sir.

09:59

21 Q. At the beginning when you mentioned the check-in process,  
22 you mentioned that when they hand their IDs and then they go  
23 into the firing lane to shoot the firearms, you filled out  
24 something else called a "card" for them; is that correct?

25 A. Yes, sir.

09:59

1 Q. Did you do that in this case?

2 A. Yes, sir.

3 Q. And so you mentioned that when you give back the ID after  
4 they've paid up and they are ready to leave, you hand the card  
5 back with the ID; is that correct?

10:00

6 A. Yes, sir.

7 Q. Did you do that for an individual in this case?

8 A. Yes, sir.

9 Q. For which individual?

10 A. For all three.

10:00

11 Q. And in particular, did you do that for Mr. DeLeon?

12 A. Yes, sir.

13 Q. Sir, directing your attention in the binder in front of  
14 you to what's been previously admitted into evidence as  
15 Exhibit 16 -- 16A, excuse me. It's a series of photographs  
16 that should appear in the front of the photocopies that appear  
17 in the front of your binder.

10:00

18 Do you see that exhibit?

19 A. Yes, sir.

20 Q. I'm going to direct your attention to the 5th of page of  
21 16A. And I'm going to direct your attention to the top right  
22 corner of 16A.

10:00

23 Do you see the item zoomed in on the screen?

24 A. Yes, sir.

25 Q. What is that?

10:00

1 A. It's a shooting ID card.

2 Q. All right. And there appears to be handwriting on that  
3 card. Whose handwriting is that?

4 A. That is my writing.

5 Q. And the staff's signature -- I don't mean to insult you or 10:01  
6 anything, but there is a squiggle. What is that?

7 A. That is my signature.

8 Q. Sir, directing your attention to page 1 of 16A. And  
9 again, directing your attention to the top right corner, this  
10 item in blue that I zoomed in on, what are we looking at here? 10:01

11 A. That is the back side of the range ID card.

12 Q. And this is the card that you gave to Mr. DeLeon when he  
13 finished and settled up -- or the group he was with settled up  
14 and they were done and were leaving the firing range; is that  
15 correct? 10:01

16 A. Yes, sir.

17 Q. Now, sir, you mentioned earlier that you watched the video  
18 from beginning to end that shows the entire set of events that  
19 happened in LAX Firing Range that day, from the time they came  
20 in to the time they first filled out the paperwork. Did you 10:02  
21 say that it included a true and accurate depiction of them  
22 renting the AR15?

23 A. Yes, sir.

24 Q. And did it show a true and accurate depiction of them  
25 walking through the second set of doors you mentioned earlier 10:02

1 and going to the firing line?

2 A. Yes, sir.

3 Q. And did you say that it showed them coming back out and  
4 returning, for example, the AR15?

5 A. Yes, sir.

10:02

6 Q. Did it show them going back and bringing -- one of them  
7 bringing the Glock into the firing lane?

8 A. Yes, sir.

9 Q. Did it show them shooting the Glock handgun?

10 A. Yes, sir.

10:02

11 Q. Did it show them then coming all the way back out into the  
12 showroom?

13 A. Yes, sir.

14 Q. And did it show them returning the firearms to LAX Firing  
15 staff?

10:02

16 A. Yes, sir.

17 Q. And did it show them checking out, interacting with you  
18 and checking out?

19 A. Yes, sir.

20 Q. And did the video truly and accurately depict them heading  
21 out the door as they finished in the shooting range that day?

10:03

22 A. Yes, sir.

23 Q. Now, you've watched that video from beginning to end. Did  
24 it appear altered in any way?

25 A. No, sir.

10:03



1 Q. Did the events and the items depicted in that video, and  
2 the people depicted in that video, truly and accurately  
3 represent the way things looked and the way they happened on  
4 September 10th, 2012?

5 A. Yes, sir.

10:03

6 Q. Sir, directing your attention in a binder in front of you  
7 to Exhibit 104.

8 Do you see that exhibit?

9 A. Yes, sir.

10 Q. What's depicted in that exhibit?

10:03

11 A. The far wall is from our showroom. Those are holsters  
12 that we sell.

13 Q. Is that some of the merchandise on the wall that you  
14 mentioned earlier?

15 A. Yes, sir, it is.

10:04

16 Q. And at the top of the photograph above the merchandise,  
17 what's on the wall?

18 A. There is a licensing that is in frames, document frames,  
19 as well as track lighting.

20 Q. Okay. And is there a person depicted in this image?

10:04

21 A. Yes, sir.

22 Q. And do you recognize that person?

23 A. Yes, sir.

24 Q. Who is that?

25 A. Mr. DeLeon.

10:04

1 Q. And sir, is this an image, having watched the entire video  
2 that truly and accurately depicts what happened on  
3 September 10th, is this an image that's a still shot from that  
4 video?

5 A. Yes, sir.

10:04

6 Q. And is this still shot a true and accurate depiction of  
7 the events that happened on September 12th -- excuse me,  
8 September 10, 2012, in the LAX Firing Range?

9 A. Yes, sir.

10 MR. GRIGG: Your Honor, at this time the Government  
11 moves to admit Exhibit 104 into evidence.

10:04

12 THE COURT: Any objection?

13 MR. LARSEN: No, Your Honor.

14 THE COURT: Mr. Thomas?

15 MR. THOMAS: Can I approach co-counsel, Your Honor?

10:05

16 THE COURT: Certainly.

17 MR. THOMAS: No objection, Your Honor.

18 THE COURT: Thank you.

19 Mr. Grigg, I think your last question asked if this  
20 still shot was a complete and accurate depiction. Is that what  
21 you meant to ask?

10:05

22 MR. GRIGG: I don't recall exactly what I said.

23 Is this still image, depicted in Government's Exhibit  
24 104, a true and accurate depiction of the events inside LAX  
25 Firing Range on September 10, 2012.

10:06

1 THE COURT: All right. Fine. 104 is ordered  
2 admitted.

3 You may publish.

4 (Government's Exhibit No. 104 admitted.)

5 BY MR. GRIGG:

10:06

6 Q. Mr. Avery, looking at the screen in front of you, is this  
7 the image we just talked about, 104?

8 A. Yes, sir.

9 Q. And then it's looking -- it appears to be an image taken  
10 from a vantage point looking straight at a wall; is that  
11 correct?

10:06

12 A. Yes, sir.

13 Q. And are these items below this blue line, that's the  
14 merchandise you mentioned before?

15 A. Yes, sir.

10:07

16 Q. What is that merchandise?

17 A. Those are holsters that we sell. So there's -- on the far  
18 right, the two vertical lines are belts, and to the left are  
19 holsters.

20 Q. And you mentioned that there was licenses. Directing your  
21 attention to the portion of the image that is circled in blue  
22 here, what are those?

10:07

23 A. Those are FFL license, our Federal Firearms License, a  
24 High Capacity Magazine Permit, and I forget what the third one  
25 is.

10:07

1 Q. Are those items still on the wall today?

2 A. It's exactly like that right now.

3 Q. And directing your attention to the individual on the  
4 left. That's the person you indicated before as Mr. DeLeon; is  
5 that correct?

10:07

6 A. Yes, sir.

7 Q. Do you see that person here in court?

8 A. Yes, sir.

9 Q. Can you please stand and describe an article of clothing  
10 and where he is sitting?

10:07

11 A. At the table over there, with the black jacket and suit.

12 MR. GRIGG: And may the record reflect that the  
13 witness has indicated defendant DeLeon?

14 THE COURT: Well, there are two people at that table  
15 wearing --

10:08

16 BY MR. GRIGG:

17 Q. All right. Mr. Avery --

18 THE COURT: Can you describe more fully?

19 THE WITNESS: Wearing glasses, white shirt, black  
20 jacket, sitting in the middle of the table.

10:08

21 THE COURT: All right. Thank you. The record may  
22 reflect that the witness has identified the defendant  
23 Mr. DeLeon.

24 MR. GRIGG: Sorry, Mr. Thomas. I didn't recognize  
25 what you were wearing today.

10:08

1 BY MR. GRIGG:

2 Q. Okay. So the individual, Mr. DeLeon, in this photograph  
3 appears to be wearing a blue hat; is that correct?

4 A. Yes, sir.

5 Q. And you mentioned that you remembered the glasses. Did he 10:08  
6 have the glasses on in this photograph?

7 A. Yes, sir.

8 Q. And he's wearing a blue and white short-sleeved shirt; is  
9 that correct?

10 A. Yes, sir. 10:08

11 Q. Directing your attention, sir, in the binder in front of  
12 you to the exhibit that's been marked as 105.

13 Do you recognize the image depicted in that exhibit?

14 A. Yes, sir.

15 Q. What are we looking at there? 10:08

16 A. That is an image -- it actually shows our front door, a  
17 few of the targets that are on the wall, and Mr. Santana.

18 Q. And is this image in 105 a true and accurate depiction of  
19 an event as it occurred on September 12th -- excuse me --  
20 September 10th, 2012? 10:09

21 A. Yes, sir.

22 Q. And is this an image taken from that video that you  
23 watched from beginning to end earlier?

24 A. Yes, sir.

25 MR. GRIGG: Your Honor, at this point the Government 10:09

1 moves to admit Exhibit 105 into evidence.

2 THE COURT: Any objections to 105?

3 MR. LARSEN: No, Your Honor.

4 MR. THOMAS: No, Your Honor.

5 THE COURT: All right. Ordered admitted. 10:09

6 You may publish.

7 (Government's Exhibit No. 105 admitted.)

8 BY MR. GRIGG:

9 Q. Sir, in the center there appears to be a door with some  
10 type of sign on it that says, "Wiley X." 10:10

11 What is that door?

12 A. That's our main security door to enter the range.

13 Q. And then you mentioned before there are targets displayed  
14 in this photograph. What side of the photograph that's on the  
15 screen are those targets? 10:10

16 A. On the left side.

17 Q. I made this crude blue arrow with the Teleprompter. Does  
18 that arrow point towards the paper targets you mentioned?

19 A. Yes, sir.

20 Q. Now, Mr. Santana appears to be in the image, facing to the 10:10  
21 left side of the image, correct?

22 A. Yes, sir.

23 Q. And he's also wearing a blue hat; is that correct?

24 A. Yes, sir.

25 Q. And to the right side of the image there appears to be 10:10

1 something on the wall behind him. What is that?

2 A. Behind him are Hogue grips.

3 Q. Is that a brand of product or merchandise that you sell?

4 A. Yes, sir, it is.

5 Q. So just to help the jury orient -- to help orient the 10:10  
6 jury, in the last photograph where we saw Mr. Santana standing  
7 in front of the wall of grips, in this image, would Mr. Santana  
8 -- sorry. I misspoke.

9 In the last image, in Government's Exhibit 104, we  
10 saw Mr. DeLeon standing in front of a wall with the signs above 10:11  
11 it, and that was a wall of merchandise. In relation to that  
12 image, where is Mr. Santana here?

13 A. In this image that's displayed currently, Mr. Santana  
14 would be behind Mr. DeLeon.

15 Q. So forgive the pantomime a little bit here, but would this 10:11  
16 image basically be to the left of the scene depicted in  
17 Government's Exhibit 104?

18 A. Yes, sir.

19 Q. And Mr. Santana has a blue hat on; is that correct, turned  
20 backwards? 10:11

21 A. Yes, sir.

22 Q. And he's wearing a dark -- what appears to be a polo-type  
23 shirt; is that correct?

24 A. Yes, sir.

25 Q. Is this image in Exhibit 104 both a true and accurate 10:11

1 still images taken from the video that you watched today; is  
2 that correct?

3 A. Yes, sir.

4 Q. Sir, directing your attention to Exhibit 110 that's in the  
5 binder in front of you. In my version, that's a single-page  
6 document; is that correct?

10:12

7 A. Yes, sir.

8 Q. And do you recognize the image depicted in 110?

9 A. Yes, sir.

10 Q. What is that image?

10:12

11 A. It is Lane 3 of our shooting range, with Mr. DeLeon with  
12 the rifle.

13 Q. And is this an image that's a true and accurate image of  
14 events that happened on September 10, 2012?

15 A. Yes, sir.

10:12

16 Q. And in this image, is Mr. DeLeon wearing the same thing  
17 that he was wearing outside?

18 A. Yes, sir.

19 Q. Does he also have something else on his head?

20 A. Earmuffs.

10:13

21 MR. GRIGG: Your Honor, at this point, the Government  
22 moves to admit Exhibit 110.

23 THE COURT: Any objections to 110?

24 MR. THOMAS: No, Your Honor.

25 MR. LARSEN: No, Your Honor.

10:13



1 THE COURT: Thank you. Exhibit 110 is ordered  
2 admitted.

3 You may publish.

4 (Government's Exhibit No. 110 admitted.)

5 BY MR. GRIGG:

10:13

6 Q. Sir, Exhibit 110, as displayed on the screen, briefly, can  
7 you tell us what we're looking at here, to help the jury maybe  
8 understand and maybe link to some of the things we were talking  
9 about earlier? What's this on the left edge of the screen  
10 where the blue line is? What is that item?

10:13

11 A. That would be the shooting partition panel.

12 Q. And the "3" in the upper left indicates the lane number,  
13 correct?

14 A. Yes, sir.

15 Q. Sir, what is this item, this square or white-colored  
16 rectangle on the lane divider?

10:13

17 A. That is the toggle switch to send the target back and  
18 forth.

19 Q. And sir, what is this item depicted here running from the  
20 lane down the range?

10:14

21 A. That's the unistrut track system.

22 Q. And in this photograph on the right side, but what is this  
23 item depicted with my crude arrow there?

24 A. That would be the target.

25 Q. And is that target hanging on a hanger that's downrange?

10:14

1 A. Yes, sir.

2 Q. Is that a paper target?

3 A. Yes, sir.

4 Q. And you mentioned Mr. DeLeon was handling the rifle. Is  
5 that the rifle indicated by the arrow?

10:14

6 A. Yes, sir.

7 Q. And is that the AR15 we talked about earlier?

8 A. Yes, sir.

9 Q. And I'll spare everyone the arrow, but the dark thing on  
10 the side of Mr. DeLeon's head in this photograph, those are  
11 earmuffs?

10:14

12 A. Yes, sir.

13 Q. Sir, directing your attention in your binder to  
14 Exhibit 111.

15 Have you seen that exhibit before?

10:15

16 A. Yes, sir.

17 Q. What is depicted in that exhibit?

18 A. It's also of Lane 3, with Mr. DeLeon with the rifle.

19 Q. And is this a true and accurate image of the events that  
20 happened on September 10, 2012, in the LAX Firing Range?

10:15

21 A. Yes, sir.

22 Q. And is this a true and accurate image from the video that  
23 you watched earlier?

24 A. Yes, sir.

25 MR. GRIGG: Your Honor, at this time the Government

10:15

1 would move to admit Exhibit 111.

2 THE COURT: 111?

3 MR. GRIGG: Yes, Your Honor.

4 THE COURT: Any objections?

5 MR. LARSEN: No, Your Honor. 10:15

6 MR. THOMAS: No, Your Honor.

7 THE COURT: 111 is ordered admitted.

8 You may publish.

9 (Government's Exhibit No. 111 admitted.)

10 BY MR. GRIGG: 10:15

11 Q. And is this the same Lane 3? He's simply looking back  
12 towards the camera holder in this view?

13 A. Yes, sir.

14 Q. You mentioned he's still holding the rifle. Is that the  
15 rifle in his left hand? 10:16

16 A. Yes, sir.

17 MR. GRIGG: No offense, Mr. DeLeon, I'm going to crop  
18 his face and just show the hands, for a clearer view.

19 BY MR. GRIGG:

20 Q. This is the rifle we were just talking about, sir; is that 10:16  
21 correct?

22 A. Yes, sir.

23 Q. And this right here, that's the front site post you talked  
24 about earlier?

25 A. Yes, sir. 10:16

1 Q. And sir, directing your attention to an exhibit that's  
2 been marked as 112.

3 Do you have that in your binder?

4 A. Yes, sir.

5 Q. Have you seen that exhibit before?

10:17

6 A. Yes, sir.

7 Q. Is that exhibit a true and accurate depiction of events  
8 that occurred on September 10, 2012, in the LAX Firing Range?

9 A. Yes, sir.

10 Q. And is that a true and accurate still image from the video  
11 that you watched earlier showing the entire course of events?

10:17

12 A. Yes, sir.

13 MR. GRIGG: At this point, the Government would move  
14 to admit Exhibit 110 -- excuse me, 112.

15 THE COURT: Any objection to 112?

10:17

16 MR. LARSEN: No, Your Honor.

17 MR. THOMAS: No, Your Honor.

18 THE COURT: Thank you. Exhibit 112 is ordered  
19 admitted.

20 You may publish.

10:17

21 (Government's Exhibit No. 112 admitted.)

22 BY MR. GRIGG:

23 Q. And in this image, what is Mr. DeLeon doing?

24 A. Firing the rifle.

25 Q. So he appears to be looking down the rear site post,

10:17

1 correct?

2 A. Yes.

3 Q. Down the front site post, correct?

4 A. Yes, sir.

5 Q. And then looking down the firing range, correct?

10:18

6 A. Yes, sir.

7 Q. And before you mentioned, when you saw this with the  
8 handgun, that to load a semiautomatic firearm, a magazine gets  
9 loaded into the firearm that contains the ammunition.

10 Sir, what is this item protruding from the bottom of  
11 the rifle?

10:18

12 A. That is the magazine.

13 Q. The magazine for the rifle?

14 A. Yes, sir.

15 Q. Now, in this image, Mr. DeLeon appears to have his hat  
16 backwards; is that correct?

10:18

17 A. Yes, sir.

18 Q. Do you recognize the type of hat that is?

19 A. It's an LA Dodgers hat.

20 Q. Sir, showing you the exhibit that's been marked  
21 Exhibit 113 in your binder in front of you.

10:18

22 Now, you mentioned earlier that Mr. DeLeon first  
23 fired an AR15 and then his group got a handgun; is that  
24 correct?

25 A. Yes, sir.

10:19

1 Q. Okay. In this image, do you recognize this image?

2 A. Yes, sir.

3 Q. Is this a true and accurate depiction of events that  
4 happened on September 10, 2012?

5 A. Yes, sir.

10:19

6 Q. And is this a true and accurate image from that video that  
7 you watched from beginning to end?

8 A. Yes, sir.

9 MR. GRIGG: At this point -- excuse me, Your Honor.

10 BY MR. GRIGG:

10:19

11 Q. Who is depicted in this video -- in this image?

12 A. Mr. DeLeon.

13 Q. And what does he appear to be doing?

14 A. Firing the handgun.

15 MR. GRIGG: At this point, Your Honor, the Government  
16 moves to admit the items previously marked 113 into evidence.

10:19

17 THE COURT: Any objection?

18 MR. THOMAS: No, Your Honor.

19 THE COURT: Mr. Larsen?

20 MR. LARSEN: No, Your Honor.

10:19

21 THE COURT: 113 is ordered admitted.

22 You may publish it.

23 (Government's Exhibit No. 113 admitted.)

24 BY MR. GRIGG:

25 Q. Now, in this image, sir, I've zoomed in on Mr. DeLeon

10:20

1 because we've all seen the rest of the stuff. It appears to be  
2 a Dodgers hat with the LA symbol, correct?

3 A. Yes, sir.

4 Q. What makes you say it appears that he's firing a handgun?

5 A. The position of his shoulders and his hands. 10:20

6 Q. In the earlier photograph we saw, Mr. DeLeon had one elbow  
7 up while he was holding the rifle; is that correct?

8 A. Yes, sir.

9 Q. Is that how you fire a handgun?

10 A. No, sir. 10:20

11 Q. In firing a handgun, you typically extend both arms in  
12 front of you?

13 A. Correct.

14 Q. Is that what he appears to be doing here?

15 A. Yes, sir. 10:20

16 Q. What is this item depicted by the crude arrow on the left,  
17 appears to be a pale-colored rectangle?

18 A. That's a target, sir.

19 Q. Now, it appears that the target here is fairly close to  
20 him; is that correct? 10:20

21 A. Yes, sir.

22 Q. Is that common for handguns?

23 A. Yes, sir.

24 Q. Showing you what's been previously marked as Exhibit 114.

25 Is that also in your binder? 10:20

1 A. Yes, sir.

2 Q. Do you recognize this exhibit?

3 A. Yes, sir.

4 Q. What is this?

5 A. It's also of Lane 3 with the rifle being fired.

10:21

6 Q. And who's firing the rifle here?

7 A. Mr. Santana.

8 Q. And sir, is this a true and accurate depiction of an event  
9 that happened on September 10, 2012, at the LAX Firing Range?

10 A. Yes, sir.

10:21

11 Q. And is this a true and accurate depiction of an image from  
12 the video that you watched earlier?

13 A. Yes, sir.

14 MR. GRIGG: At this point, the Government moves to  
15 admit, Your Honor.

10:21

16 THE COURT: Any objection?

17 MR. LARSEN: No, Your Honor.

18 MR. THOMAS: No, Your Honor.

19 THE COURT: Ordered admitted.

20 Do you intend to publish?

10:21

21 MR. GRIGG: May I?

22 THE COURT: Go ahead.

23 (Government's Exhibit No. 114 admitted.)

24 BY MR. GRIGG:

25 Q. When we first saw the photograph of Mr. DeLeon -- excuse

10:21



1 me, Mr. Santana in front of the front door with the Wiley X  
2 sticker on it that we saw a moment ago, he was wearing an LA  
3 Dodgers hat, as well, turned backwards; is that correct?

4 A. Yes, sir.

5 Q. Is that the same hat depicted here?

10:22

6 A. Yes, sir.

7 Q. And in this image is he also wearing earmuffs?

8 A. Yes, sir.

9 Q. And not to belabor the point, but this is a rifle?

10 A. Yes, sir.

10:22

11 Q. And I'll leave the jury to figure out where the front and  
12 rear site is supposed to be. And is he wearing the same polo  
13 shirt as depicted in the other exhibit?

14 A. Yes, sir.

15 Q. And the same clothes you saw him wearing that day?

10:22

16 A. Yes, sir.

17 Q. Mr. Avery, have you had a chance to view Government's  
18 Exhibit 115, which is not in the binder in front of you?

19 A. Yes, sir.

20 Q. What is Government's Exhibit 115 -- excuse me, that's been  
21 marked as 115?

10:22

22 A. It's a segment of the full-length video.

23 Q. When you say, "a segment of the full-length video," is the  
24 segment an excerpt or a clip from the full-length video that  
25 showed the true and accurate events from September 10th, 2012?

10:23

1 A. Yes, sir.

2 Q. And is that segment itself a true and accurate clip? It  
3 doesn't appear to be altered in any way?

4 A. Yes, sir.

5 Q. Excuse me. I asked that poorly.

10:23

6 Was it altered in any way?

7 A. No, sir.

8 Q. And it was a true accurate excerpt from the video that you  
9 watched earlier?

10 A. Yes, sir.

10:23

11 Q. And does it depict events that happened on September 10,  
12 2012, in LAX Firing Range?

13 A. Yes, sir.

14 MR. GRIGG: At this point, Your Honor, the Government  
15 -- excuse me. The Government moves to admit Exhibit 115.

10:23

16 THE COURT: Any objection?

17 MR. THOMAS: No, Your Honor.

18 MR. LARSEN: No, Your Honor.

19 THE COURT: Ordered admitted.

20 You may publish.

10:23

21 (Government's Exhibit No. 115 admitted.)

22 MR. GRIGG: Your Honor, this is a video, and I  
23 apologize there is sound to it. If it's really loud, I will  
24 immediately stop and try and adjust.

25 THE COURT: All right.

10:23

1 MR. GRIGG: And for the record, Your Honor, and for  
2 counsel's benefit, of course, this is one that does not have a  
3 transcript.

4 If I can ask Mr. Chiu to adjust the screen so that I  
5 can see the controls to start it. 10:24

6 BY MR. GRIGG:

7 Q. Sir, this is the beginning of the image for Exhibit 115.

8 Who is depicted with his back to the camera here?

9 A. Mr. Santana.

10 (video playing) 10:25

11 BY MR. GRIGG:

12 Q. Who is that?

13 A. Mr. DeLeon.

14 MR. GRIGG: And, Your Honor, may I pause and ask is  
15 that too loud, or is that acceptable? 10:25

16 THE COURT: Does anyone on the jury want to have it  
17 turned down? I think it's fine.

18 (video playing)

19 BY MR. GRIGG:

20 Q. Mr. Avery, to accelerate things a little bit here because 10:27  
21 this is going to get even more repetitive, have you had an  
22 opportunity to review what's been marked as Government's  
23 Exhibits 116, 117 and 118 as well?

24 A. Yes, sir.

25 Q. Are those also excerpts of the video that we discussed 10:27

1 earlier?

2 A. Yes, sir.

3 Q. Do each and every one of those truly and accurately depict  
4 events as they happened at LAX Firing Range on September 10,  
5 2012?

10:27

6 A. Yes, sir, they do.

7 MR. GRIGG: Your Honor, at this point I would move to  
8 admit all three, 116, 117, 118, or I can do them one at a time  
9 if the Court prefers.

10 THE COURT: Any objection to those three?

10:27

11 MR. THOMAS: No, Your Honor.

12 MR. LARSEN: Just one moment, Your Honor.

13 MR. GRIGG: Your Honor, may I inquire of the witness,  
14 while counsel is conferring? Or should I wait for them?

15 THE COURT: Wait.

10:28

16 MR. LARSEN: Thank you. No objection.

17 THE COURT: Thank you. Is it 14, 15 and 16?

18 MR. GRIGG: 16, 17 and 18, Your Honor, 116, 117, 118.

19 THE COURT: Ordered admitted.

20 You may publish.

10:28

21 (Government's Exhibit Nos. 116, 117, 118 admitted.)

22 BY MR. GRIGG:

23 Q. Mr. Avery, the items -- excuse me.

24 This is Exhibit 116. It's now on the screen before  
25 you. The individual under Lane 3 with his back to the camera,

10:28

1 is that person in this fire lane as well?

2 A. Yes, sir.

3 Q. And is this a true and accurate depiction of what happens?

4 A. Yes, sir.

5 (video playing)

10:28

6 BY MR. GRIGG:

7 Q. I'm going to pause this right here. I forgot to ask you.

8 Mr. Avery, does this appear to be Defendant DeLeon  
9 with the handgun that you discussed earlier?

10 A. Yes, sir.

10:29

11 Q. Next, I will display 117.

12 And, Mr. Avery, the individual here wearing a darker  
13 top, polo shirt, is that Mr. Santana?

14 A. Yes, sir.

15 (video playing)

10:29

16 BY MR. GRIGG:

17 Q. I'm going to pause this right here for a minute.

18 We previously saw two videos, 115 and 116, that  
19 displayed Mr. DeLeon first shooting the AR15, and then shooting  
20 the handgun. In this video, based on how Mr. Santana is  
21 firing, what weapon is he firing in this video?

10:30

22 A. The AR15.

23 Q. And again, down the middle, that's his target?

24 A. Yes, sir.

25 Q. And lastly, Exhibit 118.

10:30

1 (video playing)

2 BY MR. GRIGG:

3 Q. We last saw Mr. Santana with the assault rifle. In this  
4 video, is he firing a handgun?

5 A. Yes, sir.

10:31

6 (video playing)

7 MR. THOMAS: Your Honor, my morning coffee has hit me  
8 a little early.

9 THE COURT: All right. Do you want to take a recess?  
10 Are you about done?

10:32

11 MR. GRIGG: I'm almost done, actually, Your Honor.

12 THE COURT: That's all right. We can take our recess  
13 at this point, ladies and gentlemen, for 15 minutes.

14 Remember, don't discuss the case or communicate in any way  
15 way with anyone about it. Don't form or express any opinions  
16 about the case, and don't do any research.

10:32

17 Thank you. You're excused until 10:45.

18 (Out of the presence of the jury:)

19 THE COURT: You may step down.

20 MR. THOMAS: 10:45, Your Honor?

10:33

21 THE COURT: 10:45.

22 MR. AARON: Your Honor, can counsel approach for just  
23 a moment, please?

24 THE COURT: Certainly.

25 (Off-the-record sidebar discussion.)

10:33

1 (Recess)

2 (In the presence of the jury:)

3 THE COURT: Let the record reflect the presence of  
4 all members of the jury, all counsel, the defendants are  
5 present.

10:53

6 You may continue.

7 MR. GRIGG: Thank you, Your Honor.

8 BY MR. GRIGG:

9 Q. Mr. Avery, you mentioned earlier that the three  
10 individuals that you saw on that day, the two younger men,  
11 Mr. DeLeon and Mr. Santana, and the third man, the Middle  
12 Eastern male, it drew your attention because of the way they  
13 were behaving. Did any one of the three appear to be directing  
14 or telling the others what to do?

10:53

15 A. Not necessarily telling each other what to do, no, sir.

10:54

16 Q. Did it appear that one person was bringing the others to  
17 the range?

18 A. I don't know how they arrived at the range. They walked  
19 in together. Some of the questions were answered together.

20 For the most part, it didn't seem like one person had any more  
21 control over the other.

10:54

22 Q. Okay. Now, when they left, who paid?

23 A. The older gentleman paid.

24 Q. And he paid how?

25 A. In cash.

10:54

1 Q. Sir, directing your attention to what's been previously  
2 marked and admitted as Exhibit 106, and this is the third page,  
3 and this is the assault rifle waiver, high-powered rifle waiver  
4 for Mr. DeLeon, with the signature down here. I'm going to  
5 zoom in for a second.

10:55

6 At the top, is this the address for the firing range,  
7 927 West Manchester Boulevard, in Inglewood, at 90031, in  
8 California?

9 A. It's 90301. But, yes, sir.

10 Q. I misspoke. Yes, thank you.

10:55

11 Sir, directing your attention to what's previously  
12 been marked and admitted as Exhibit 16A, which is in the binder  
13 in front of you, page 7.

14 MR. GRIGG: Your Honor, forgive me. I've been  
15 assuming if it's already been marked I can just go ahead and  
16 publish without asking for additional permission.

10:55

17 THE COURT: If it's already been admitted, you mean?

18 MR. GRIGG: Yes.

19 THE COURT: Yes. Go ahead.

20 BY MR. GRIGG:

10:55

21 Q. Now, in 16A, we talked about before the LAX Firing Range  
22 blue shooting card, and so on, and this is another page in that  
23 same exhibit, correct?

24 A. Yes, sir.

25 Q. And that was the -- sorry. I was vague there or didn't be

10:56



1 precise.

2 The shooting range card, the blue one we were talking  
3 about, is the one you filled out for Mr. DeLeon, correct?

4 A. Yes, sir.

5 Q. Sir, directing your attention to the middle of the three 10:56  
6 things depicted on this page, the top one appears to be a pink  
7 note that says, "Dubai to Afghanistan." I'm talking about the  
8 second one, and I have put this blue mark at the top of it.

9 Do you see that on the screen?

10 A. Yes, sir. 10:56

11 Q. Now, there does appear to be a horizontal line written in  
12 pen on this Post-it. Below this line that I've highlighted in  
13 blue, do you see information written on the Post-it?

14 A. Yes, sir, I do.

15 Q. And what is that information? 10:56

16 A. That is the address, phone number, and closing time for  
17 our range.

18 Q. LAX Firing Range?

19 A. Yes, sir.

20 Q. Although it's not fully spelled out, where I've directed 10:57  
21 the arrow there appears to be a word written immediately below  
22 that pen line. What does that word appear to be?

23 A. "Ingle," for "Inglewood."

24 MR. GRIGG: Nothing further, Your Honor.

25 THE COURT: All right. Thank you. 10:57

1 Mr. Larsen, you may inquire.

2 MR. LARSEN: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. LARSEN:

5 Q. Good morning, Mr. Avery. 10:57

6 A. Good morning, sir.

7 Q. You testified that on September the 10th of 2012 three  
8 people came to your gun range, and you said that these three  
9 people didn't match, or didn't blend, correct?

10 A. Yes, sir. 10:57

11 Q. And that's because one of them was an older gentleman, and  
12 the other two were two young men; is that correct?

13 A. Yes, sir.

14 Q. And when you were taking them in, you took all three of  
15 their IDs; is that correct? 10:57

16 A. Yes, sir.

17 Q. And so you looked at the IDs and you saw their dates of  
18 birth, correct?

19 A. Sir?

20 Q. You looked at their IDs and you saw their dates of birth,  
21 correct? 10:58

22 A. Yes, sir.

23 Q. So you saw that the older gentleman was roughly in his  
24 40s; is that correct?

25 A. I don't recall the year he was born. On appearance, he 10:58

1 did appear a lot older than the other two.

2 Q. A lot older than the other two?

3 A. Yes, sir.

4 Q. And you recall that the other two, from looking at them,  
5 if not from looking at their IDs, were roughly in their early  
6 20s; is that correct?

10:58

7 A. Yes, sir.

8 Q. Now, do you recall looking at the IDs and seeing the names  
9 on the IDs?

10 A. Not necessarily the names, no, sir.

10:58

11 Q. So you don't recall what the names of the gentlemen were?

12 A. After looking through the stuff that was in the book here,  
13 yes. But at the time, I was more interested in the addresses  
14 than I were the names.

15 Q. The addresses. We saw in the book earlier we saw a  
16 release for Mr. DeLeon and a release from Mr. Santana. Was  
17 there a release for the third man?

10:58

18 A. Yes, sir.

19 Q. There was?

20 A. Yes, sir.

10:58

21 Q. So do you recall from that release what the third man's  
22 name was?

23 A. No, sir.

24 Q. You don't recall?

25 A. No, sir.

10:59

1 Q. Now, you said that the group -- you testified earlier this  
2 morning that the group seemed interesting and out of the  
3 ordinary.

4 Do you recall that testimony?

5 A. Yes, sir.

10:59

6 Q. Now, do you also recall, sir, having an interview with the  
7 FBI on September the 27th of 2012, about a visit that the three  
8 men paid to your gun range?

9 A. I don't remember the date, but I do remember the visit.

10 Q. You do recall an interview with an FBI agent?

10:59

11 A. Yes, sir.

12 Q. And do you recall that that was Agent Theodore Nevatt?

13 A. I do not remember his name, sir.

14 Q. Okay. But you do recall having a conversation with an FBI  
15 agent roughly two weeks after this visit?

10:59

16 A. Yes, sir.

17 Q. Now, sir, did you tell the agent that you thought the  
18 group was interesting and out of the ordinary?

19 A. Yes, sir.

20 Q. You did tell him that?

10:59

21 A. Yes, sir.

22 Q. All right. When the three men approached and wanted to  
23 rent some guns and rent some ammunition to use in the range,  
24 they selected, as you testified already, a rifle and a handgun;  
25 is that correct?

11:00

1 A. Yes, sir.

2 Q. So the gentlemen did not arrive with their own guns,  
3 correct?

4 A. No, sir.

5 Q. And the gentlemen did not arrive with their own  
6 ammunition; is that correct?

7 A. No, sir.

8 Q. You also testified that you had a procedure by which if a  
9 person had never been to the gun range before they would have  
10 to show an ID. And then once you approve them, you issue them  
11 a gun range ID -- and we saw the one for Mr. DeLeon?

12 A. Yes, sir.

13 Q. So clearly, Mr. DeLeon had never been to the range before;  
14 is that correct?

15 A. That's not necessarily true.

16 Q. Oh, it's not necessarily true?

17 A. Somebody could maintain a range card and lose it and have  
18 to fill the paperwork out again if they don't have it. So if  
19 they arrive -- if they've come before and they were issued a  
20 card, however, they lose it, they have to fill out the  
21 paperwork again.

22 So that doesn't mean that that was the only time that  
23 they've ever been to the range. It just means that on that day  
24 they did not have a range card and had to resubmit the  
25 paperwork.

1 Q. And had these three men come to the range before?

2 A. I don't know, sir.

3 Q. You don't know?

4 A. No, sir.

5 Q. You don't recall them ever coming before?

11:01

6 A. No, sir, I don't.

7 Q. All right. Moving, then, to the actual time in which the  
8 three men used the gun to shoot at a target. Did you  
9 personally observe the three of them for the entire time that  
10 they were shooting the weapon?

11:01

11 A. Not the entire time, no, sir.

12 Q. You did not?

13 A. No.

14 Q. All right. You testified earlier this morning, sir, that  
15 certain photographs and certain videos, which were played for  
16 the jury, were true and accurate depictions of what these three  
17 gentlemen did while they were at the range.

11:01

18 Do you recall that testimony?

19 A. Yes, sir.

20 Q. However, you've just told us that you didn't actually  
21 watch them the entire time that they were shooting the guns?

11:01

22 A. I misunderstood your question. I did not physically watch  
23 them the day that they were there, but I did watch the entire  
24 video.

25 Q. You watched -- did you take the video, sir?

11:01

1 A. No, sir, I did not.

2 Q. And, yet, you testified earlier that that video taken by  
3 someone else was a true depiction of events that you just told  
4 us you didn't watch?

5 A. Yes, sir.

11:01

6 Q. Thank you, sir.

7 MR. LARSEN: Your Honor, at this time we would like  
8 to strike the photographs and videos introduced, as having no  
9 foundation.

10 THE COURT: Mr. Grigg?

11:02

11 MR. GRIGG: Your Honor, I believe Mr. Avery also  
12 testified that he watched the video from beginning to end, that  
13 he was in the video, that the portions of the video that he  
14 watched were true and accurate and did not appear to be altered  
15 in any way, and that it was one complete video from beginning  
16 to end that showed their arrival and their departure from the  
17 range.

11:02

18 THE COURT: All right. Well, I'll take up the  
19 request outside the presence of the jury and let you argue it  
20 further.

11:02

21 MR. LARSEN: Thank you, Your Honor.

22 BY MR. LARSEN:

23 Q. Sir, if you could please turn your attention in your  
24 exhibit book to Government Exhibit 111.

25 Do you have that in front of you, sir?

11:02

1 A. Yes, sir.

2 Q. And do you recall this image?

3 A. Yes, sir.

4 Q. And could you tell us who appears in the image?

5 A. Mr. DeLeon.

11:03

6 MR. LARSEN: And if there's no objection, I would  
7 like to move Exhibit 111 into evidence.

8 THE COURT: Is 111 not in evidence? It's in.

9 MR. LARSEN: It is already? Forgive me. I was under  
10 the impression it wasn't. I would like to just display it now,  
11 if I may, Your Honor?

11:03

12 THE COURT: Go ahead.

13 BY MS. LARSEN:

14 Q. So sir, you said this is Mr. DeLeon, correct?

15 A. Yes, sir.

11:03

16 Q. And would you agree that in this photograph it appears  
17 that Mr. DeLeon is looking back?

18 A. Yes, sir.

19 Q. And could it be that Mr. DeLeon is looking back for some  
20 kind of guidance or instruction?

11:03

21 A. I don't know why he's looking back, sir.

22 Q. But it's possible that he could be doing that?

23 MR. GRIGG: It appears to call for speculation, Your  
24 Honor.

25 THE COURT: Sustained.

11:03



1 BY MR. LARSEN:

2 Q. So you've testified, sir, that you saw the two younger men  
3 shooting.

4 Did the older gentleman shoot as well?

5 A. Yes, sir, he did. 11:04

6 Q. He did? And did you see an image of the older man  
7 shooting on the video that you reviewed?

8 A. Yes, sir.

9 Q. You did?

10 A. Yes, sir. 11:04

11 Q. The video that was played earlier this morning, you saw  
12 the older man depicted on that video shooting a weapon?

13 A. Yes, sir.

14 MR. LARSEN: All right. One moment, Your Honor.

15 BY MR. LARSEN: 11:04

16 Q. And sir, I believe you said, on your direct testimony,  
17 when the gentlemen were finished the older man came and he paid  
18 for everybody in cash, correct?

19 A. Yes, sir.

20 Q. And how much was the bill? 11:04

21 A. I don't recall right off exactly how much it was.

22 Q. Do you recall that the ammunition itself was about \$170?

23 A. I don't recall the prices.

24 Q. Would it refresh your memory if you were to see a summary  
25 of the interview you had with the FBI agent on this point? 11:05

1 A. Yes, sir.

2 MR. LARSEN: Your Honor, may I hand up a copy --

3 THE COURT: You may approach the witness.

4 MR. LARSEN: Thank you, Your Honor.

5 BY MR. LARSEN:

11:05

6 Q. If I could ask you to just review that and let me know  
7 when you're done, please. Thank you.

8 Mr. Avery, having reviewed that document, does it  
9 refresh your recollection as to how much the ammunition cost?

10 A. It shows how much, I believe, that they paid at the time,  
11 yes, sir.

11:06

12 Q. So the ammunition itself was roughly \$170; is that  
13 correct?

14 A. Based upon my recollection, yes, sir.

15 Q. Thank you, sir.

11:06

16 Finally, Mr. Avery, you've testified that there were  
17 three gentlemen there that day: Mr. DeLeon, Mr. Santana, and  
18 an older gentleman about -- roughly 40 years old.

19 Do you see the gentleman with the dark hair, sitting  
20 to my right?

11:07

21 A. Yes, sir.

22 Q. That's my client, Mr. Kabir. Sir, Mr. Kabir wasn't there  
23 that day, was he?

24 A. No, sir.

25 MR. LARSEN: Thank you very much. No further

11:07

1 questions, Your Honor.

2 THE COURT: Thank you. Mr. Thomas.

3 MR. THOMAS: Thank you, Your Honor.

4 Your Honor, I have an exhibit. May I approach your  
5 court clerk? 11:07

6 THE COURT: Yes.

7 MR. THOMAS: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 **CROSS-EXAMINATION**

10 BY MR. THOMAS: 11:08

11 Q. Good morning, Mr. Avery. How are you doing?

12 A. Good, sir. How are you?

13 Q. Good. Good. On the podium or the surface in front of  
14 you, I put what has been previously marked as Defense  
15 Exhibit 6000 for identification. Can you take a look at that, 11:08  
16 all three pages of it, and let me know when you're done?

17 A. I'm done, sir.

18 Q. That is the -- appears to be your standard release  
19 agreement for the LAX Firing Range, page 1 and 2, and then  
20 page 3 is the addendum for the use of the high-powered rifle? 11:08

21 A. Yes, sir.

22 Q. If you look at the bottom right corner of each page, it  
23 appears to bear an "N" with a circle around that.

24 Do you see that?

25 A. Yes, sir. 11:08

1 Q. Is that your initials?

2 A. Yes, sir, it is.

3 Q. All right. And then if you'd look at the date on pages 2  
4 and 3, it appears to be September 10th, 2012; is that correct?

5 A. Yes, sir.

11:09

6 Q. And then if you look at the date of birth, it just has the  
7 year displayed, on page 2.

8 Do you see that where it says, "'72"?

9 A. Yes, sir.

10 Q. If someone was born in 1972, how old would they have been  
11 in 2012?

11:09

12 A. 40.

13 Q. Do you recognize this document?

14 A. Yes, sir.

15 Q. This is the release agreement for the third individual  
16 that was with Mr. DeLeon and Mr. Santana, was it not?

11:09

17 A. Yes, sir.

18 MR. THOMAS: Okay. Your Honor, I'd like to move  
19 Exhibit 6000 into evidence, please.

20 MR. GRIGG: No objection, Your Honor.

11:09

21 MR. LARSEN: No objection.

22 THE COURT: Ordered admitted as Exhibit 6000.

23 (Defense Exhibit No. 6000 admitted.)

24 MR. THOMAS: 6000. Thank you. May I publish it?

25 THE COURT: Yes, you may.

11:09

1 BY MR. THOMAS:

2 Q. All right. Mr. Avery, I know you saw this exhibit, but  
3 this is the first time the jury is seeing it.

4 The bottom right corner, that's your "N" with a  
5 circle around it? 11:10

6 A. Yes, sir.

7 Q. And this is the first page of the agreement?

8 A. Yes, sir.

9 Q. All right. The second page, see in the middle here where  
10 it has that "'72" listed as the date of birth? 11:10

11 A. Yes, sir.

12 Q. As well as "September 10, 2012"? What's the time next to  
13 September 10th, 2012?

14 A. 3:15.

15 Q. Do you remember what time Mr. DeLeon and Mr. Santana  
16 signed their agreements? 11:10

17 A. 3:17.

18 Q. Okay. So the older gentleman, the one in his 40s, he's  
19 the one that signed his agreement first; is that correct?

20 A. Yes, sir. 11:10

21 Q. I also want to show you, on page 2, there's -- I believe  
22 the Government may have asked you this, but there's a series of  
23 questions.

24 The first one asked, *Have you ever been convicted in*  
25 *any court of a felony?"* 11:11

1 Do you see that?

2 A. Yes, sir.

3 Q. Why do you ask that?

4 A. We have no way of running background checks on customers  
5 that visit the range. So I personally wrote this form as a 11:11  
6 screening process to weed out people that will voluntarily  
7 admit that they are a prohibited person from owning or  
8 possessing firearms. I put these questions on here so if they  
9 mark yes to any of those, we automatically note that they can't  
10 come in. 11:11

11 Q. Well, why does it matter if someone has a felony  
12 conviction?

13 A. Because if they have a felony conviction, they are  
14 prohibited from owning or possessing firearms.

15 Q. Which means they couldn't shoot in your range? 11:11

16 A. That's correct. Yes, sir.

17 Q. Could they even possess the weapon or the ammunition?

18 A. No, sir.

19 Q. I'm going to move the form a little bit to the left. You  
20 see the answer for the older gentleman, he marked "No"? 11:11

21 A. Yes, sir.

22 Q. Okay. Did you have any reason to doubt what he was saying  
23 when he told you that day?

24 A. I didn't have, like, any reason not to. No, sir.

25 Q. On or before September 10th, 2012, did the Government ask 11:12

1 you for permission to allow someone with a felony conviction to  
2 shoot at your range?

3 A. I'm sorry. Say that again.

4 MR. GRIGG: Objection. Assumes facts not in  
5 evidence.

11:12

6 THE COURT: Overruled.

7 You may answer.

8 THE WITNESS: Can you repeat the question, please?

9 BY MR. THOMAS:

10 Q. Yeah. On or before September 10th of 2012, did the  
11 Government seek your permission to allow someone with a felony  
12 conviction to shoot at your range?

11:12

13 A. No, sir.

14 Q. Would it surprise you to learn that the 40-year-old  
15 gentleman had a felony conviction?

11:12

16 A. It's just a matter of somebody being honest on the form.  
17 I have no way of knowing if they tell the truth or not. It's  
18 just a screening process that we use to weed out people that  
19 shouldn't be there.

20 Q. You saw the older gentleman handling and shooting  
21 firearms?

11:12

22 A. Yes.

23 Q. And if he had a felony conviction, he would have been  
24 committing a crime in your range?

25 A. Yes, sir.

11:13

1 Q. If that is ever brought to your attention, what are you  
2 supposed to do?

3 A. I, personally, I contact the local law enforcement. So I  
4 will call Inglewood PD.

5 Q. But in this particular case, no one brought anything to  
6 your attention?

11:13

7 A. No, sir.

8 Q. My co-counsel, Mr. Larsen, asked you about the videos and  
9 the pictures which were, I believe, stills from the video you  
10 saw. That was not video from your store's surveillance camera,  
11 was it?

11:13

12 A. No, sir.

13 Q. It was video from someone's cell phone?

14 A. I don't know what it was recorded with.

15 Q. Was it brought to your attention who recorded it?

11:13

16 A. No, sir.

17 Q. How did it come to your attention that that video existed?

18 A. I saw it this morning for the first time.

19 Q. One of the prosecutors handed it to you?

20 A. They brought it up on a computer screen.

11:14

21 Q. One of the prosecutors or one of the agents?

22 A. Prosecutor.

23 Q. All right. So you had never seen that video between  
24 September 10th, 2012, and this morning?

25 A. No, sir.

11:14



1 Q. So your statement about whether or not the older gentleman  
2 was depicted in the video could be incorrect because today,  
3 this morning, is the first time you've ever seen that video,  
4 correct?

5 A. Today is the first time I've ever seen the video, yes,  
6 sir. 11:14

7 Q. Right. And have you ever seen the 40-year-old gentleman  
8 any time since September 10, 2012?

9 A. No, sir.

10 Q. Did the Government tell you, before they showed it to you,  
11 where the video came from? 11:14

12 A. No, sir.

13 Q. Where did you believe it came from?

14 A. From a recording device.

15 Q. What type of a recording device? 11:14

16 A. A hidden one. I didn't see it. I'm in the video myself.  
17 So I didn't see anybody recording when they came in.

18 Q. Did you see any of the three gentlemen recording while  
19 they were shooting on the range?

20 A. During the process in the video, it shows they have their  
21 cell phones out, the two younger gentlemen. And the older  
22 gentleman had his cell phone out, which you can see his hand,  
23 and he's doing texts and taking a call on the video, so yes. 11:15

24 Q. I mean, did it appear that the older gentleman is the one  
25 actually taking the video? 11:15

1 A. From the hidden camera?

2 Q. I don't know where he had his camera. But when you see  
3 the hand of someone holding a cell phone, it's not Mr. DeLeon  
4 or Santana because they are downrange in the picture?

5 A. Correct. Yes, sir.

11:15

6 MR. THOMAS: I have no further questions, Your Honor.

7 THE COURT: Redirect, Mr. Grigg?

8 MR. GRIGG: Just briefly.

9 **REDIRECT EXAMINATION**

10 BY MR. GRIGG:

11:15

11 Q. Mr. Avery, in the video, as Mr. Thomas just asked you, you  
12 mentioned that there are -- there appear to be hands in front  
13 of the video, and it appears that the older gentleman was the  
14 -- was wearing the recording device, wherever it was; is that  
15 correct?

11:16

16 A. Yes, sir.

17 Q. And you recall seeing that person and Mr. DeLeon and  
18 Mr. Santana in your firing range on that day, correct?

19 A. Yes, sir.

20 Q. And each of the exhibits, including the exhibit that  
21 Mr. Larsen sought to admit that had already been admitted,  
22 that's Exhibit 111, those are true and accurate pictures from  
23 the entire video, correct?

11:16

24 A. Yes, sir.

25 Q. Did those images appear to be altered in any way?

11:16

1 A. No, sir.

2 Q. Did the excerpt videos that you watched today appear to be  
3 altered in any way?

4 A. No, sir.

5 Q. Did they include depictions of Mr. DeLeon wearing his 11:16  
6 Dodgers hat and his blue shirt with the white stripes as you  
7 saw him that day?

8 A. Yes, sir.

9 Q. Did they depict Mr. Santana wearing the blue Dodgers hat  
10 turned backwards, the dark polo shirt, as he wore it that day? 11:16

11 A. Yes, sir.

12 Q. And as depicted in the still images of which are already  
13 -- we've already discussed?

14 A. Yes, sir.

15 Q. So when you mentioned that you also saw in the video what 11:17  
16 appeared to be the hands of the older gentleman, you said he  
17 was using his phone, correct?

18 A. Yes, sir.

19 Q. And so you could see his hands holding his phone. And I  
20 believe that might have been in one of the snippets we saw 11:17  
21 today; is that correct?

22 A. Yes, sir.

23 Q. And you also mentioned that you saw the other defendants  
24 -- excuse me.

25 You saw defendant DeLeon and Mr. Santana separately, 11:17

1 with phones in their hands?

2 A. Yes, sir.

3 Q. And is it common for people who come to the shooting range  
4 to take videos and pictures with their phones while they or  
5 their friends are firing?

11:17

6 A. Yes, sir.

7 Q. And all of that is truly and accurately depicted in the  
8 excerpts that we saw today?

9 A. Yes, sir.

10 Q. And in the underlying video which, again, you've watched  
11 from beginning to end and shows the interaction when they came  
12 into the store, correct?

11:17

13 A. Yes, sir.

14 Q. Shows them going through the paperwork process with the  
15 paper exhibits that we've seen here in court today, correct?

11:17

16 A. Yes, sir.

17 Q. And shows them going into the firing lane, correct?

18 A. Yes, sir.

19 Q. And does not appear to have been altered in any way, as  
20 you watched it from beginning to end?

11:18

21 A. No, sir.

22 Q. And it also shows them coming out, correct?

23 MR. LARSEN: Your Honor, counsel is leading the  
24 witness and repeating himself.

25 THE COURT: Refrain from leading questions.

11:18

1 MR. GRIGG: Thank you, Your Honor.

2 BY MR. GRIGG:

3 Q. Does the video also show them coming out?

4 A. Yes, sir.

5 Q. And is there any portion of the video, the part of the  
6 video showing them come out, that looks altered to you in any  
7 way?

11:18

8 A. No, sir.

9 Q. Is there any portion of the video showing them come in  
10 that looks altered to you in any way?

11:18

11 A. No, sir.

12 Q. Is there any portion of the video showing them in the  
13 firing lane itself that looks altered to you in any way?

14 A. No, sir.

15 Q. And the excerpts that were played today, do those appear  
16 to be exact replications or just pieces of that longer video?

11:18

17 A. Yes, sir.

18 Q. And are any of those excerpts altered in any way?

19 A. No, sir.

20 MR. GRIGG: Nothing further, Your Honor.

11:18

21 THE COURT: Thank you. You may step down.

22 The Government may call its next witness.

23 MR. GRIGG: Thank you, Your Honor. The Government  
24 calls Kit Wilson. And I believe the Court has a binder  
25 already.

11:19

1 THE CLERK: Sir, please stop right there. Raise your  
2 hand.

3 **GOVERNMENT'S WITNESS, KIT WILSON, WAS SWORN**

4 THE CLERK: Thank you. You may be seated.  
5 Please state your full name and spell it for the  
6 record.

11:19

7 THE WITNESS: Kit Wilson. K-I-T, W-I-L-S-O-N.

8 THE COURT: Thank you.

9 You may inquire.

10 **DIRECT EXAMINATION**

11:19

11 BY MR. GRIGG:

12 Q. Good morning, sir. Are you currently employed?

13 A. Yes, sir.

14 Q. Where do you work?

15 A. I work for the Federal Bureau of Investigation, at the Los  
16 Angeles field office in Westwood.

11:20

17 Q. And is that on Wilshire Boulevard?

18 A. Yes, sir.

19 Q. How long have you worked for the FBI?

20 A. Just under five years. September will be five years, sir.

11:20

21 Q. Are you a law enforcement agent?

22 A. No, sir.

23 Q. What is your position there?

24 A. I am an operations specialist in the Operations  
25 Communication Center.

11:20

1 Q. Have you had any other assignments with the FBI?

2 A. No, sir.

3 Q. Before joining the FBI, where did you work?

4 A. I worked for the Department of the Air Force.

5 Q. What did you do there?

11:20

6 A. I was a network director for satellite operations at  
7 Onizuka Air Force Station, in Sunnyvale, California.

8 Q. Any prior law enforcement experience?

9 A. No, sir.

10 Q. Have you ever testified in court before?

11:20

11 A. No, sir.

12 Q. Tell me about -- or tell us about the Operations Control  
13 Center at the FBI. What does it do?

14 A. Well, sir, any time you call the FBI in Los Angeles, it's  
15 likely, during the daytime, you'll speak with me. So we field  
16 all the calls. We make the determination whether or not it is  
17 an FBI matter. If it is an actual law enforcement matter,  
18 we'll refer it to the proper agency, whether it be a state,  
19 local, or federal.

11:20

20 Also, we'll take calls from field agents because we  
21 also do the dispatch operations. So we take phone calls from  
22 agents that require anything from a vehicle registration check  
23 to wants or warrants on a possible subject.

11:21

24 We also --

25 Q. If you don't mind, I'm going to stop you right there

11:21

1 because that's a whole lot of information.

2 A. Okay.

3 Q. You're the person, when someone from the public wants to  
4 call the FBI in LA, that might be actually answering the phone?

5 A. Yes, sir, I am.

11:21

6 Q. Do you take complaints and things of that nature?

7 A. Yes, sir, I do.

8 Q. You take inquiries --

9 A. Yes, sir.

10 Q. -- about federal matters?

11:21

11 A. Yes, sir, I do.

12 Q. Do you work alone in the -- is there an acronym or a short  
13 name for the Operation Control Center?

14 A. We call it the OCC.

15 Q. Do you work alone in the OCC?

11:22

16 A. No, sir. During -- we are a 24-hour operation. And  
17 during the dayshift, we usually have about between six and  
18 eight people working on staff, sir.

19 Q. And are those folks sworn law enforcement?

20 A. No, sir.

11:22

21 Q. Are they operations specialists such as yourself?

22 A. Yes, sir.

23 Q. What are your particular responsibilities when you're  
24 working in the OCC?

25 A. Oftentimes, sir, I'm usually assigned to the watch

11:22



1 commander desk, which is the point of contact. We kind of  
2 oversee for the radio dispatch if we have any requests for NCIC  
3 requests, comprehensive background checks, the closed circuit  
4 TV monitors that we have within the building and within the  
5 exterior and interior of the building, and any phone calls that  
6 come in. If it's something that we would have to further  
7 investigate, we determine whether or not it is an FBI matter,  
8 and then we route it to the appropriate squad or field office.

11:22

9 Q. So this is the OCC, meaning the operations, sort of,  
10 center for the FBI in LA.

11:23

11 A. Yes, sir.

12 Q. Aside from calls from the public, is it a source for other  
13 information coming in and going out, for example, about  
14 something that may be happening in the LA area?

15 A. Yes, sir.

11:23

16 We also monitor bank robberies, and Los Angeles is  
17 considered the bank robbery capital of the world. So we are  
18 responsible for the bank robberies within the Los Angeles  
19 territory all the way down to Palm Springs, as far north as  
20 Santa Barbara.

11:23

21 Q. So when a bank robbery or some other urgent situation  
22 comes in, the call goes to you at the OCC --

23 A. Yes, sir.

24 Q. -- and your staff. And from there, that's how the FBI  
25 sort of puts things in action; is that fair?

11:23

1 A. Yes, sir.

2 Q. Do you take reports of crimes?

3 A. Yes, sir.

4 Q. And do you, as an operations specialist, go out and  
5 investigate those crimes?

11:24

6 A. No, sir.

7 Q. So when you take the reports, what do you do with them?

8 A. We take all the information. We -- what we often do is,  
9 we take the information. If it is determined to most likely be  
10 a federal matter, we will route it to the appropriate squad  
11 supervisor. If it is a matter involving violent crime,

11:24

12 possible mortgage fraud, crimes against children, we just make  
13 the determination what squad that will go to, and we'll send a  
14 form which is called an FD-71, which is a complaint form, and  
15 we will send it to the squad supervisor and they will make the  
16 determination whether or not it is something they would  
17 investigate and go further.

11:24

18 Q. So you take in the calls and you determine, *Okay, this*  
19 *should be investigated; it seems to fall within a particular*  
20 *unit, area of responsibility,* and you refer the matter to that  
21 unit and they do the investigation.

11:25

22 Is that correct?

23 A. Well, we don't make the final determination. We just --  
24 if it meets a certain nexus that it is possibly an FBI matter  
25 or federal matter that the FBI would investigate, we would send

11:25

1 it to the squad supervisor of the particular violation, who  
2 then may or may not follow up with an investigation. We just  
3 do the preliminary. We just take the report and route it to  
4 who we best believe would be the appropriate squad that would  
5 investigate that within our field office or -- and the other 11:25  
6 resident agencies. If it's a crime that's taking place in  
7 another area that's not specific to Los Angeles, maybe  
8 Riverside or West Covina or Orange County, we would send it to  
9 that supervisor, sir.

10 Q. So as an operations specialist assigned to the OCC, most 11:25  
11 of your work is actually in the OCC space. Is that a  
12 particular office within the federal building in Westwood?

13 A. Yes, sir. It's located on the 14th floor within the  
14 inside of the Westwood federal building, sir.

15 Q. Okay. And I take it that floor is an FBI floor in the 11:26  
16 building?

17 A. Yes, sir.

18 Q. Are there other federal agencies in that building?

19 A. Yes, sir. The first floor is the Department of State  
20 Passport Office. And then Floors 2 through 7 are the Veterans 11:26  
21 Affairs, and Floors 8 through 17 are FBI space, sir.

22 Q. Now, you mentioned the passport services on the first  
23 floor; is that correct?

24 A. Yes, sir.

25 Q. Now, is the federal building just a standalone building, 11:26

1 or is there a couple of other buildings in the plaza? Can you  
2 describe it for folks who may not have been there?

3 A. The federal building -- there is the main building. And  
4 off to the -- if you're facing it, to the east of it there's a  
5 little cafeteria, and there's a little small Credit Union. And 11:26  
6 right next to that they have, I guess, a little conference  
7 room.

8 And to the west of it, there is the -- we have a Post  
9 Office, a fully functioning Post Office. And then there's --  
10 it's like a little plaza area where people can eat lunch. For 11:27  
11 most people that are eating lunch there, they are there for  
12 their passports.

13 And then we have the main federal building, and it's  
14 17 stories.

15 Q. So in the three buildings you've described, the main 11:27  
16 building is the tallest of the three, the 17 floors?

17 A. Yes, sir.

18 Q. And the two are sort of positioned east and west, roughly;  
19 is that correct?

20 A. Yes, sir. 11:27

21 Q. And sort of south of all of that -- what is south of all  
22 of that?

23 A. There is the parking lot, sir.

24 Q. So when you say there's a Passport Services Office in the  
25 federal building, is that the place where U.S. citizens would 11:27

1 go to apply for and obtain passports?

2 A. Yes, sir.

3 Q. Now, some folks might have had the experience -- you can  
4 actually apply for a passport in the Post Office. Is the  
5 Passport Services Office you're talking about a separate place?  
6 They don't go into -- in other words, the Post Office you  
7 described, they actually go into the main building; is that  
8 correct?

11:27

9 A. Yes, because you can actually get your passport the same  
10 day at the passport office.

11:28

11 Q. And same-day passport service, that's in case of urgent --  
12 for urgent matters; is that correct?

13 A. Correct, sir.

14 Q. In order to go in and apply for a passport, does one need  
15 to enter the main entrance of the federal building to get into  
16 the office, the Passport Services Office?

11:28

17 A. Yes, sir.

18 Q. Is the main office -- sorry.

19 Is the main entrance just wide open; anybody can walk  
20 in?

11:28

21 A. No, sir. You have to go through a security checkpoint,  
22 sir.

23 Q. Now, sir, did you come into the courthouse through the  
24 main entrance today?

25 A. Yes, sir.

11:28

1 Q. Now, in the main entrance of the courthouse there's a  
2 metal detector and courtroom security officers, CSOs, the  
3 gentlemen in the blue coats, who screen and put things through  
4 the metal detector, and so on. Is there a similar setup at the  
5 main entrance at Westwood?

11:29

6 A. Yes, sir, there is.

7 Q. So if a person was to go into the passport office and  
8 apply for a passport, they would go through the security check  
9 to get into the passport services?

10 A. Correct, sir.

11:29

11 Q. When people come to pick up the passports, do they have to  
12 go back through the security check just to pick up the  
13 passport?

14 A. No, sir.

15 Q. What can those people do?

11:29

16 A. There is a will-call window. It's just south of the --  
17 it's at the federal building. It's on the outer exterior.  
18 It's south of the building, sir.

19 Q. So if one is standing at the window, facing the main  
20 building, facing the will-call window, what is all the way  
21 behind them?

11:29

22 A. Directly behind them is the cafeteria and the Justice  
23 Federal Credit Union, sir.

24 Q. And if one continues past that to the south, would one end  
25 up in the parking lot -- I think you mentioned was to the

11:30

1 south?

2 A. Yes, sir.

3 Q. Is security an issue at the federal building in Westwood?

4 A. No, sir. I don't believe so.

5 Q. Are there -- what I mean by an "issue" is, do the federal 11:30  
6 agencies at the building there have security measures other  
7 than simply having the very important folks who do the security  
8 at the main door? Are there other systems in place?

9 A. Yes, sir.

10 Q. And what kind of systems are those? 11:30

11 A. Well, right inside where the x-ray machines are there is a  
12 contract security company. I believe the company is called  
13 Paragon Security. And on the outside, there are individuals  
14 with white uniforms. They are with the Department of State,  
15 and they walk around. They are armed. All of them are armed. 11:30

16 We also have the exterior cameras, interior cameras,  
17 as well as numerous armed agents within the building.

18 Q. Now, the location on Westwood -- excuse me.

19 The location in Westwood we discussed earlier that's  
20 on Wilshire Boulevard, is that the corner of Wilshire and 11:31  
21 Veteran Boulevard?

22 A. Yes, sir.

23 Q. How long have you worked in that building?

24 A. Five years, sir, approximately.

25 Q. And during your time there, have you frequent, sort of, 11:31

1 public rallies and protests that happen at the corner of  
2 Wilshire and Veteran?

3 A. Yes, sir.

4 Q. And at some point, sometimes those folks will park or  
5 start their rallies in a parking lot and simply go out on the 11:31  
6 corner and have whatever banners or displays or rally activity,  
7 correct?

8 A. Correct, sir.

9 Q. And so as part of the OCC's responsibility -- you  
10 mentioned there are security cameras? 11:31

11 A. Yes, sir.

12 Q. Does the OCC have the ability to monitor the security  
13 camera footage in and around the federal plaza?

14 A. Yes, sir.

15 Q. Without giving away too many details, is there a lot of 11:31  
16 camera coverage at Westwood?

17 A. Yes, sir.

18 Q. Now, folks who have been in, for example, stores, like  
19 retail stores, might be familiar with closed circuit TV, like  
20 store securities. Is that sort of what we're talking about 11:32  
21 when we talk about surveillance cameras?

22 A. Yes, sir, in a way.

23 Q. Sorry?

24 A. I said in a way, yes, sir.

25 Q. Perhaps a little bit more robust? 11:32



1 A. Yes, sir, a bit.

2 Q. But, you know, cameras mounted, and they look at a certain  
3 direction and they record what happens?

4 A. Yes, sir.

5 Q. I mentioned "record" a minute ago, and I forgot to ask  
6 you. Does the system at Westwood have the ability to record  
7 events on the cameras?

11:32

8 A. Yes, sir.

9 Q. And is that automatic?

10 A. Yes, sir.

11:32

11 Q. And that happens all the time for monitoring and safety  
12 purposes for protecting the federal building; is that correct?

13 A. Correct, sir.

14 Q. Is the security system always on, meaning the cameras are  
15 always in action?

11:33

16 A. Yes, sir.

17 Q. How does the staff at the OCC -- how does someone such as  
18 yourself who is inside the OCC on the 14th floor, how are you  
19 able to monitor what's going on through the cameras?

20 A. We have four stations right in front of us, and there are  
21 ten, I think they are 19-inch-screen TVs, and 50-inch-screen  
22 TVs above that have smaller little images on there, and they  
23 run 24 hours a day, our monitors.

11:33

24 Q. So for those of us who might have seen in the movies of  
25 scenes where there is the wall of screens everywhere, is that

11:33

1 what you get to do all day long?

2 A. Yes, sir.

3 Q. Can the staff in the OCC actually control or manipulate  
4 the cameras?

5 A. Yes, sir.

11:33

6 Q. How do you do that?

7 A. There is a control panel with a little knob and toggle  
8 switch so you can toggle between the different cameras. You  
9 can zoom in, zoom out, move the cameras up and down. The zoom  
10 -- we can zoom in on pretty much anything within the perimeter  
11 of the federal building in Westwood.

11:34

12 Q. Sir, turning your attention to November 14th, 2012, were  
13 you working in the OCC that day?

14 A. Yes, sir.

15 Q. And on that day, did some agents ask you to do something?

11:34

16 A. Yes, sir.

17 Q. And did you end up doing what they asked?

18 A. Yes, sir.

19 Q. What did you do?

20 A. They asked me if we had the capability to follow a person  
21 that arrived at the parking lot to the passport office. I said  
22 we do have that capability, and asked if I would do that for  
23 them. And I did that for them, sir.

11:34

24 Q. And after that request and monitoring the person going up  
25 to the passport office -- sorry. Was it the passport window?

11:34

1 A. Yes, sir.

2 Q. Did you make a copy of that video?

3 A. There was a copy made, yes, sir. There is a separate room  
4 that have, like, DVRs like you would have. They just  
5 constantly record the specific camera. Each camera has its own  
6 DVR.

7 Q. Sir, showing you what's previously been marked as  
8 Government's Exhibit 175, do you recognize that exhibit?  
9 Sorry.

10 In the short bookcase to your right, there is a  
11 folder with your name on it. Please take it out and put it on  
12 the counter in front of you. If you would turn to the tab  
13 marked "175."

14 Have you had an opportunity to review that?

15 A. Yes, sir.

16 Q. Do you recognize that exhibit?

17 A. Yes, sir.

18 Q. What is that exhibit?

19 A. That is a still photograph of the video of the subject  
20 that I was asked to follow on the camera, sir.

21 Q. And does this truly and accurately depict the individual  
22 you mentioned on November 14th, 2012, going to the passport  
23 window?

24 A. Yes, sir.

25 Q. And is this individual in fact at the window as it appears

1 in this image now?

2 A. Yes, sir.

3 Q. What does he appear to be doing? Does he appear to be  
4 walking? Moving? Standing? What's he doing?

5 A. He's standing, sir.

11:36

6 Q. And this is -- in the upper left corner of the exhibit  
7 there appears to be a date and time marker.

8 Do you see that?

9 A. Yes, sir.

10 Q. And that date and time marker says what?

11:36

11 A. It says, "11-14-2012, 1336 hours and 43 seconds."

12 Q. And 1336 hours, for those of us who operate on a 12-hour  
13 clock, is that 1:36 in the afternoon?

14 A. Yes, sir.

15 MR. GRIGG: Your Honor, at this point the Government  
16 would move to admit Exhibit 175.

11:36

17 THE COURT: Any objection?

18 MS. VIRAMONTES: No, Your Honor.

19 MR. THOMAS: No, Your Honor.

20 THE COURT: 175? Is that the right number?

11:37

21 MR. GRIGG: 175, yes, Your Honor.

22 THE COURT: Is ordered admitted.

23 And you may publish.

24 (Government's Exhibit No. 175 admitted.)

25 MR. GRIGG: Your Honor, before I actually post that,

11:37

1 if the Court wouldn't mind, I would like to address the second  
2 exhibit and we'll just do them together because it might go  
3 quicker.

4 THE COURT: Go ahead.

5 BY MR. GRIGG:

11:37

6 Q. Sir, turning to the binder in front of you, do you  
7 recognize what is under the tab that's been marked Exhibit 176?

8 A. I do, sir.

9 Q. What is that exhibit?

10 A. That is a still shot of the video of the subject walking  
11 away after leaving the will-call passport window, sir.

11:37

12 Q. And is there a date and time marker on the upper left of  
13 this exhibit?

14 A. Yes, sir.

15 Q. Same date of November 14th?

11:37

16 A. Yes, sir.

17 Q. Non 24-hour time, what time is indicated here?

18 A. 1:37 p.m.

19 Q. Now, sir, the individual in this photograph appears to be  
20 doing something. What is that?

11:38

21 A. It looks like he's waving the passport envelope that was  
22 handed to him.

23 Q. Now, do you recall this happening when it happened?

24 A. Yes, sir.

25 Q. Were you live-monitoring? Were you watching the feed live

11:38

1 as it happened?

2 A. Yes, sir.

3 Q. And were you actually the person who hand -- or tilted or  
4 zoomed, or whatever you did with the camera to get this image?

5 A. Yes, sir.

11:38

6 Q. Where is this individual at the time this still image  
7 appears?

8 A. He's walking away from the building, the federal building,  
9 south towards the parking lot.

10 Q. And you say he appears to be holding something up in his  
11 hand?

11:38

12 A. Yes, sir.

13 Q. Now, to be clear, you mentioned before that he appeared to  
14 be going to the passport pickup window in the other image, and  
15 in this one he appears to be walking away, holding up  
16 something, correct?

11:39

17 A. Yes, sir.

18 Q. You're not sure what the document was, it just appears  
19 that it probably would be the passport?

20 A. It was probably the passport. The light blue envelopes  
21 that they hand out when they -- you don't go back into the  
22 building to get your passport; it's to the will-call window,  
23 and it's -- they're these very -- it's the same color as this.  
24 So that's what we assumed it was, sir.

11:39

25 MR. GRIGG: At this point, Your Honor, the Government

11:39

1 would move to admit Exhibit 176.

2 THE COURT: Any objection to 176?

3 MS. VIRAMONTES: No objection, Your Honor.

4 MR. THOMAS: No objection.

5 THE COURT: Ordered admitted.

11:39

6 You may publish both of the last two documents  
7 received into evidence.

8 (Government's Exhibit No. 176 admitted.)

9 BY MR. GRIGG:

10 Q. Sir, this is Exhibit 175. And the individual on the left,  
11 is that the subject you were talking about earlier?

11:40

12 A. Yes, sir.

13 Q. And that place where he is right now, is he literally  
14 standing at the passport window?

15 A. Yes, sir.

11:40

16 Q. And this is the point where his back would be towards -- I  
17 think you said the federal cafe and then further beyond the  
18 parking lot?

19 A. Yes. He's facing north towards the federal building, sir.

20 Q. And in this image, he appears to be reaching into his back  
21 pocket?

11:40

22 A. Correct, sir.

23 Q. Sir, showing you what's been marked here and admitted as  
24 176, in this image this is the photo of the person who you said  
25 appears to be holding up something as if showing it, correct?

11:40

1 A. Yes, sir.

2 Q. And this would have happened after he had turned to walk  
3 away from that passport window?

4 A. Yes, sir.

5 MR. GRIGG: Thank you. Nothing further. 11:41

6 THE COURT: Ms. Viramontes.

7 MS. VIRAMONTES: Thank you, Your Honor.

8 THE COURT: You're welcome. Cross-examination.

9 **CROSS-EXAMINATION**

10 BY MS. VIRAMONTES: 11:41

11 Q. Good afternoon -- I guess good morning.

12 A. Good morning, ma'am.

13 Q. You testified that your office has the capabilities to  
14 watch the passport office, correct?

15 A. Correct. 11:41

16 Q. Okay. And the FBI called you before they wanted you to  
17 start observing the area, correct?

18 A. Not called. I was approached by agents that walked into  
19 the OCC.

20 Q. Okay. So the agents contacted you ahead of time? 11:41

21 A. Yes.

22 Q. Okay. Thank you. And that's because the FBI knew ahead  
23 of time that Mr. Gojali was going to be going to the passport  
24 office, correct?

25 A. I would assume so, ma'am. 11:42



1 Q. And that's because the confidential informant told the FBI  
2 that he was going to be driving them there, correct?

3 MR. GRIGG: Objection. Lacks foundation and calls  
4 for speculation.

5 THE COURT: Sustained.

11:42

6 BY MS. VIRAMONTES:

7 Q. Does your video show Mr. Gojali paying for the passport?

8 A. No, it does not.

9 Q. So you didn't see if he paid in cash?

10 A. He would pay inside the passport office. He wouldn't pay  
11 out at the will call.

11:42

12 Q. And in the video that you saw, the man seated to my right  
13 in the light blue shirt, he wasn't in the video, was he?

14 A. I don't recall.

15 MS. VIRAMONTES: Thank you. No further questions.

11:42

16 THE COURT: Thank you.

17 Mr. Thomas.

18 MR. THOMAS: No, Your Honor.

19 THE COURT: Thank you. You may step -- oh, any  
20 redirect? I'm sorry.

11:42

21 MR. GRIGG: No, thank you, Your Honor.

22 THE COURT: Thank you. You may step down.

23 The Government's next witness.

24 MS. DEWITT: The Government calls Xiomara Rodriguez  
25 Lopez.

11:43

1 THE COURT: Please come forward.

2 THE CLERK: Please raise your right hand.

3 **GOVERNMENT'S WITNESS, XIOMARA RODRIGUEZ LOPEZ, WAS SWORN**

4 THE CLERK: Thank you. You may be seated.

5 Please state your full name and spell it for the  
6 record.

11:43

7 THE WITNESS: Xiomara Rodriguez Lopez. That's,  
8 X-I-O-M-A-R-A, R-O-D-R-I-G-U-E-Z, L-O-P-E-Z.

9 THE COURT: Thank you.

10 You may inquire.

11:44

11 **DIRECT EXAMINATION**

12 BY MS. DEWITT:

13 Q. Good morning, Officer. Are you currently employed?

14 A. Yes, ma'am.

15 Q. Who are you employed by?

11:44

16 A. Customs and Border Protection.

17 Q. And is Customs and Border Protection part of the  
18 Department of Homeland Security?

19 A. Yes, ma'am.

20 Q. What is your title?

11:44

21 A. I'm a Customs and Border Protection officer.

22 Q. What is your current duty location?

23 A. JFK International Airport.

24 Q. And you flew out here from New York to testify today?

25 A. Yes, ma'am.

11:44

1 Q. What time did you get here?

2 A. 2:00 in the morning.

3 Q. You're a little tired?

4 A. Yes, ma'am.

5 Q. Thank you for coming out.

11:44

6 Can you just briefly tell the jury what your -- what  
7 the responsibilities are of border protection, customs and  
8 border protection?

9 A. Customs and border protection, to deter terrorism,  
10 intercept narcotics, and illegal entry into the United States.

11:45

11 Q. So fair to say the responsibility of your organization is  
12 sort of to protect the border?

13 A. Yes, ma'am.

14 Q. And what are your current responsibilities at JFK as a  
15 border protection officer?

11:45

16 A. We process all persons entering the United States.

17 Q. And in this case, in your case, you're at the airport?

18 A. Yes, ma'am.

19 Q. So you primarily -- in your current job, you primarily  
20 deal with people that are entering into the United States from  
21 outside of the country?

11:45

22 A. Yes, ma'am.

23 Q. And can you explain to the jury a little bit about how  
24 that process works when somebody first arrives into the  
25 country?

11:45

1 A. Well, people are seeking admission into the United States.  
2 United States citizens are seeking reentry, and permanent  
3 residents are seeking reentry, and you have visitors entering  
4 for business or pleasure. And your main function is to make  
5 sure they are admissible into the United States.

11:46

6 Q. So if I come into the airport at JFK, for example, what  
7 would I have to do to get past you?

8 A. Present your documents, your U.S. Passport and your  
9 Customs Declaration to enter.

10 Q. And what would you do to make the determination about  
11 whether or not that person should enter?

11:46

12 A. You ask questions. You ask them their citizenship or the  
13 reason why they are entering the United States, the purpose of  
14 entering the U.S.

15 Q. So you would validate or verify whether or not they have a  
16 legal right to enter the United States?

11:46

17 A. Yes, ma'am.

18 Q. Either because they are coming back to the United States  
19 or because they are, in some instances, there may be people  
20 that are coming in for the first time?

11:47

21 A. Yes, ma'am.

22 Q. So the basic primary purpose, when somebody first comes  
23 in, is to make a determination about whether or not they should  
24 be allowed in?

25 A. Yes, ma'am.

11:47

1 Q. And what happens if you make a determination that -- what  
2 happens after that, if the person is determined to be -- to  
3 have the legal right to either come back into the United States  
4 or to be in the United States?

5 A. If they're admissible, they just go home. They enter the 11:47  
6 United States.

7 Q. So you let them in?

8 A. Yes, ma'am.

9 Q. In some instances, do you decide to take further action?

10 A. Yes, ma'am. 11:47

11 Q. And would you call that -- what do you call that process?

12 A. Secondary inspection.

13 Q. So in some instances, the person is just allowed to come  
14 into the United States?

15 A. Yes, ma'am. 11:47

16 Q. And is that what typically happens for most of the people  
17 coming into the country?

18 A. Say again.

19 Q. Is that typically what happens for most of the people that  
20 are coming into the country? 11:48

21 A. Yes, ma'am.

22 Q. And for example, where you currently work at the airport,  
23 is that a fairly busy place?

24 A. Yes, ma'am, it is.

25 Q. Is it one of the busiest places of entry, in an airport in 11:48

1 the United States?

2 A. Yes, ma'am. It's one of them.

3 Q. Do you have any idea of, like, how many people go through  
4 that port of entry on a given day?

5 A. Through JFK, it all depends. There is different  
6 terminals. I would say about 50,000 people a day.

11:48

7 Q. So you have to process a lot of people?

8 A. Yes, ma'am, we do.

9 Q. And can you explain a little bit about what your specific  
10 job responsibilities are in that process, just generally?

11:48

11 A. When a person enters the United States, you're basically  
12 determining if the person is admissible into the United States.  
13 If they are a U.S. citizen, you examine them. And if there's  
14 no derogatory, or if there's nothing that precludes them from  
15 entering the U.S., they just leave, they enter the U.S.

11:49

16 Q. If I'm coming in -- if I'm flying into JFK Airport, are  
17 you the person that I meet when I'm coming through the passport  
18 line?

19 A. One of us, yes, ma'am. I am one.

20 Q. Do you have other jobs besides that passport line?

11:49

21 A. Yes, ma'am.

22 Q. What are those jobs?

23 A. Secondary inspection.

24 Q. And can you explain a little bit more about what you mean  
25 by doing a secondary inspection? What would be involved in

11:49

1 that?

2 A. If a person enters the United States and the officer on  
3 the line in primary inspection feels that the person should go  
4 in for a secondary inspection just to ask a few more questions,  
5 they are referred to secondary.

11:49

6 Q. So when they first come in, it would be the primary  
7 inspection. And in some instances, for whatever reason, they  
8 can refer a person to secondary?

9 A. Yes, ma'am.

10 Q. And is that something that you're involved in?

11:50

11 A. Yes, ma'am.

12 Q. And when somebody goes into a secondary inspection, what  
13 happens to the person who's being -- who's going through that  
14 process? What would happen?

15 A. You ask more questions. If you need to look through their  
16 luggage, you inspect the luggage for contraband.

11:50

17 Q. So you would have an opportunity to interview the person?

18 A. Yes, ma'am.

19 Q. You would have an opportunity to examine their luggage and  
20 anything they might have on their person?

11:50

21 A. Yes, ma'am.

22 Q. And you would have an opportunity, if you felt it was  
23 warranted, to make copies of things that they were carrying  
24 either in their luggage or on their person?

25 A. Yes, ma'am.

11:50

1 Q. And this is something that your organization is authorized  
2 to do by law; is that right?

3 A. Yes, ma'am.

4 Q. It's part of protecting the border?

5 A. Yes, ma'am.

11:51

6 Q. If a person is subject to an interview and potentially had  
7 some of their items of luggage or their personal items  
8 inspected and reviewed, what typically happens after that?

9 A. Once they satisfy the inspection, they go home. They  
10 leave.

11:51

11 Q. So those people are allowed to come in?

12 A. Yes, ma'am.

13 Q. And they go through the process?

14 A. Yes, ma'am.

15 Q. And in some instances, something else happens. Do you  
16 detain them further?

11:51

17 A. If the person is entering the United States with false  
18 documents, we put in the proceedings. We remove them.

19 Q. So if ultimately there's a determination made that the  
20 person doesn't have a legal right to come into the country,  
21 then you take some further action?

11:51

22 A. Yes, ma'am.

23 Q. If the person comes into the country and, for example, you  
24 discover that they have drugs in their luggage or they have  
25 something else that's illegal, what would happen to them?

11:52



1 A. They would get arrested.

2 Q. And if a person is coming in and you aren't able to  
3 validate their documentation, their proof of citizenship, or  
4 their proof that they have a visa to come into the country,  
5 what happens to them?

11:52

6 A. They get detained until they are found either admissible  
7 or inadmissible to enter the United States.

8 Q. So you've got -- on the one extreme, you've got people  
9 that get arrested because they have something illegal or  
10 they're doing something illegal, and then you have people that  
11 just can't verify, or you suspect whether they have a legal  
12 right to be in the country. And those people sort of are in a  
13 little bit of limbo then?

11:52

14 A. Yes, ma'am.

15 Q. And they go through some further processing?

11:52

16 A. Yes, ma'am.

17 Q. And ultimately, the goal of that process is to sort of get  
18 to the bottom of whether or not they really should be allowed  
19 in the country, and if not, take some steps to do what?

20 A. To remove them from the country.

11:53

21 Q. And *remove them from the country* means, basically, they  
22 have to go home? They have to go back?

23 A. Yes, ma'am.

24 Q. How long have you been a customs -- a Customs and Border  
25 Protection officer?

11:53

1 A. Since 2003.

2 Q. 2003. And what happened in 2003?

3 A. That's where Immigration and Customs and Agriculture  
4 merged into one agency under the Department of Homeland  
5 Security.

11:53

6 Q. And what were you before that?

7 A. An immigration inspector.

8 Q. Did your job change at that time or just the name of the  
9 agency that you worked for?

10 A. Just the name of the agency.

11:53

11 Q. And who did you work for before?

12 A. Department of Justice Immigration and Naturalization.

13 Q. Sometimes referred to as "INS"?

14 A. Yes, ma'am.

15 Q. And how long have you -- if you start from the beginning  
16 of your employment at INS, when did that start?

11:53

17 A. Well, at the border started in 2001, September the 9th.

18 Q. So you essentially, although maybe with different titles,  
19 have been a Customs and Border Protection officer since when?

20 A. Since 2001.

11:54

21 Q. 2001. And what did you do before that?

22 A. I worked for INS.

23 Q. Even before you became a border protection officer?

24 A. Yes, ma'am.

25 Q. What did you do then?

11:54

1 A. I was an immigration information officer.

2 Q. What is an immigration information officer?

3 A. You work at the service centers or the district offices  
4 for INS, which is now USCIS, and you dealt with the public for  
5 information.

11:54

6 Q. You said, "UCIS." Is that the part of immigration that  
7 used to handle people's citizenship?

8 A. Yes, ma'am.

9 Q. So what was your job there?

10 A. I dealt with the public. They would come in and ask  
11 questions with their applications, and we would give them the  
12 information that they were seeking.

11:54

13 Q. So in that job you became familiar with what people needed  
14 to do to get their status, legal status, in the United States?

15 A. Yes, ma'am.

11:55

16 Q. And you would help them answer questions that people had  
17 about that process?

18 A. Yes, ma'am.

19 Q. Prior to the time that you worked -- when did you  
20 first start --

11:55

21 A. Excuse me, ma'am?

22 Q. When did you first go to work in New York?

23 A. I left for New York in August of 2012.

24 Q. So you've been there for the last 12 years?

25 A. No, two.

11:55

1 Q. Two years. Excuse me.

2 A. Yes, ma'am.

3 Q. My brain is definitely not working today.

4 You've been there for the last two years. Where were  
5 you stationed before that?

11:55

6 A. The San Ysidro Port of Entry, in San Diego.

7 Q. So where is the San Ysidro Port of Entry?

8 A. It's at the border with San Diego and Tijuana, Mexico.

9 Q. So on the -- on the U.S. side it's called "San Ysidro"?

10 A. Yes, ma'am.

11:56

11 Q. And on the Mexican side of the border?

12 A. It's Tijuana.

13 Q. For Tijuana. Okay.

14 And can you describe for the jury so that they have  
15 sort of an understanding or a visual of what that port of entry  
16 -- what's there? What's it look like?

11:56

17 A. It's very large. It's one of the busiest man borders that  
18 the U.S. has. It's vehicle primary, and pedestrian, people  
19 entering, walking into the U.S.

20 Q. So this is a port of entry that I think you said was one  
21 of the busiest in the country?

11:56

22 A. Yes, ma'am.

23 Q. So you've gone from the fire into the frying pan?

24 A. Yes, ma'am.

25 Q. And when you say "busy," just as a rough estimate, how

11:57

1 many people go across the border at San Ysidro from Mexico to  
2 the United States, on any given day?

3 A. About 50,000 a day.

4 Q. So again, the people that are working at that port of  
5 entry are processing a huge number of people?

11:57

6 A. Yes, ma'am.

7 Q. And when you say 50,000 people, you mean 50,000 people as  
8 well as the vehicles?

9 A. It's including vehicles and the people in the vehicles.

10 Q. And this particular port of entry, as you called it, are  
11 there other types of ports of entry besides on the border?

11:57

12 A. Yes, ma'am.

13 Q. So you've got the airport ports of entry, which is where  
14 you work now, and then you've got a land-based port of entry,  
15 which is where you used to work at the border. And then is  
16 there also some places that maybe where cargo and things like  
17 that come in?

11:57

18 A. There's cargo and there's also seaport.

19 Q. Seaport? What's an example of a seaport?

20 A. The cruise terminals here in San Diego, Long Beach, where  
21 the cruise ships come in.

11:58

22 Q. So you have where the cruise ships come in where people  
23 might need to also go through customs?

24 A. Yes, ma'am.

25 Q. And then you have different locations where maybe cargo is

11:58

1 coming in?

2 A. Yes, ma'am.

3 Q. Do you also have some land, land locations where more  
4 cargo -- and not necessarily oriented on people and cars, but  
5 where cargo comes through as well?

11:58

6 A. The cargo usually has people coming through as well.

7 Q. You don't work with cargo?

8 A. No, ma'am, I don't.

9 Q. There are other individuals within your organization that  
10 would deal with, like, cargo ships and trucks and shipping  
11 trucks; is that correct?

11:58

12 A. Yes, ma'am.

13 Q. And this particular port of entry in San Ysidro, that's  
14 not a primary port for which people would bring in merchandise;  
15 is that correct?

11:58

16 A. Yes, ma'am.

17 Q. It's mostly people in cars?

18 A. Yes, ma'am.

19 Q. How many people work in -- just directing your attention  
20 back to the time frame of 2012, the time before you left to go  
21 to New York, how many people would typically work at the port  
22 of entry on a given day? Just an estimate to get a sense of  
23 the sort of size of the operation.

11:59

24 A. Well, there's three different shifts -- no, four different  
25 shifts. Sorry. About at least 500 or more officers.

11:59

1 Q. 500 on any given shift?

2 A. Yes, ma'am -- not shift, but total for the day, of  
3 officers.

4 Q. So are you talking about for a 24-hour period? Or are you  
5 talking about --

12:00

6 A. Yes, ma'am, 24-hour period.

7 Q. So any given 24-hour period there might be as many as 500  
8 Customs and Border Protection employees working at this  
9 particular port of entry?

10 A. Yes, ma'am.

12:00

11 MS. DEWITT: Is this a good time?

12 THE COURT: Yes. All right, ladies and gentlemen,  
13 we'll break for lunch until 1:15 this afternoon.

14 Everything I've told you before about not  
15 communicating, not researching, not forming or expressing any  
16 opinions about the case, they become more important every time  
17 I give them, even though you're more familiar with them.

12:00

18 Thank you. We'll see you back at 1:15.

19 (Out of the presence of the jury:)

20 THE COURT: You may step down.

12:01

21 We're on the record outside the presence of the jury  
22 to address the defense's objection and request to strike the  
23 video.

24 I don't remember what exhibit number it was.

25 Mr. Larsen?

12:01

1 MR. LARSEN: Yes, Your Honor.

2 I believe there were several items. There were two  
3 videotapes taken of Mr. Santana and Mr. DeLeon firing. And  
4 then there were also stills, photographic stills taken from the  
5 video of them at the range. And --

12:01

6 THE COURT: So let me say this -- let's see if we can  
7 speed things along.

8 As I see it, the issue -- and I think this was the  
9 nature of the objection -- the issue is whether a proper  
10 foundation was laid for the admission because the witness --  
11 the witness' testimony about the foundation was that he  
12 observed the -- well, he observed Mr. --- was it Santana or  
13 Gojali who was there?

12:02

14 MR. THOMAS: Santana.

15 THE COURT: -- Mr. Santana and Mr. DeLeon and the  
16 confidential informant when they arrived, because he was the  
17 one at the range, because he was the one who checked them in  
18 and gave them the forms, and so forth. And he testified that  
19 he had watched the whole video through today for the first  
20 time. And he testified the video did not appear to be altered,  
21 but the video did not come from any cameras that are  
22 permanently installed at the firing range, and he doesn't have  
23 knowledge of who made the video, who recorded the video.

12:02

12:03

24 So it seems to me -- and I'll let both sides argue  
25 this, but it seems to me that there is foundation for parts,

12:03



1 for some of the stills and parts of the video, because he could  
2 testify as to what was recorded and that he also observed,  
3 because he could testify and lay a foundation that was an  
4 accurate depiction.

5 But since he did not observe the -- I'll just say for  
6 shorthand -- "the defendants" the entire time that they were at  
7 the range and didn't testify that he was watching them during  
8 the entire time that they were shooting or talking, or anything  
9 else, I don't know how he could lay the foundation for the  
10 recording of that.

12:04

12:04

11 So Mr. Grigg.

12 MR. GRIGG: Yes, Your Honor.

13 As an initial matter, the Court is correct that he  
14 observed the entire video from beginning to end, as he  
15 testified.

12:04

16 He also testified that he's in the beginning -- he is  
17 on the video in the beginning because he's the person checking  
18 them in, helping them fill out their forms, interacting with  
19 them, taking their IDs, issuing Mr. DeLeon his range card --  
20 the blue card that's in 16A on page 5 and page 1 -- and  
21 providing them the firearms that they then take into the firing  
22 line.

12:04

23 He also testified that he is in the video checking  
24 them out when they leave, taking payment from them, and --

25 THE COURT: He can testify to those two parts because

12:05

1 he personally observed and, therefore, he is in a position to  
2 lay the foundation to say the video is accurate.

3 MR. GRIGG: Well, Your Honor, he can, of course, do  
4 that. He can also lay the foundation for the stills because he  
5 observed the individuals that day.

12:05

6 THE COURT: The stills of those two parts.

7 MR. GRIGG: The stills depicting Mr. Santana and  
8 Mr. DeLeon. I believe those are 104 and 105.

9 THE COURT: At the beginning and at the end?

10 MR. GRIGG: I believe both of the stills of the  
11 individuals were at the beginning. And that matter is for a  
12 reason I'll get to in a second.

12:05

13 Obviously, he can lay the foundation for the firearms  
14 themselves, and there has not been an objection to those.

15 Those firearms appear in the videos that were being  
16 fired -- as they were being fired -- Exhibit 115 through 118.  
17 He can also, and has established that the defendants depicted  
18 in the videos -- excuse me.

12:06

19 Defendant DeLeon and Mr. Santana depicted in the  
20 videos were wearing the same exact clothes they were when they  
21 came in as they were wearing in the excerpts that were played  
22 in court; the same Dodger hats, the same light blue or bright  
23 blue with white stripe top for Mr. DeLeon, the same dark blue  
24 polo for Mr. Santana, the fact that they were wearing ear  
25 protection, the fact that they were firing the AR15 rifle that

12:06

12:06

1 he handed to them.

2 So all of those are circumstances which the Court can  
3 infer and the jury can infer that it is, in fact, the same day,  
4 the same events, and the same depictions. And he testified  
5 that he watched the full video from beginning to end, and it 12:07  
6 did not appear altered in any way.

7 Now, there is no requirement in the law that he be  
8 the person making the recording. There is no requirement --

9 THE COURT: I agree with that, but he has to be able  
10 to testify in order to lay the foundation that -- well, I don't 12:07  
11 think he -- I don't think he's in a position to testify that it  
12 doesn't appear to have been altered, because he wasn't present  
13 during and didn't observe all of the events shown. So I don't  
14 think he can do that.

15 MR. GRIGG: Your Honor, I'm sorry to interrupt. But 12:07  
16 what I mean by that and what he meant by that, I believe, is he  
17 watched the underlying video from beginning to end, and it did  
18 not appear to have alterations. It was a running, continuous  
19 video from beginning to end.

20 THE COURT: I still don't think he -- he doesn't have 12:07  
21 the expertise to say it hasn't been altered.

22 MR. GRIGG: But I think a layperson, just like the  
23 jury could, could watch any of those, or the Court could watch  
24 the video, see whether it skips, whether there are blackouts or  
25 edits, or anything like that. And he said there was none of 12:08

1 that. And he also said there was no alterations for the  
2 excerpts that were played in court.

3 He also, aside from the self-authenticating fact of  
4 the clothing and the items that Mr. DeLeon had in the showroom  
5 that were taken in and appear in the excerpts that were played, 12:08  
6 that also go to establish that the video is what it purports to  
7 be, namely, the same circumstances depicted that Mr. Avery  
8 certainly could testify to outside: Dodger hat, the blue  
9 stripe shirt --

10 THE COURT: I understand all the points you're 12:08  
11 making. But apart from the -- what he personally observed that  
12 he could authenticate, he cannot authenticate and lay a  
13 foundation for the other parts of the video.

14 Now, I suspect you have a witness who can, which  
15 would be the witness who made the recording, but that's not the 12:09  
16 witness you had on the witness stand.

17 So in my view, you have two choices: You can either  
18 -- so I would -- let's see.

19 I would be inclined to strike all the portions of the  
20 video, other than those that Mr. Avery testified that he 12:09  
21 watched, which would be the beginning and the end, and then you  
22 could replay for the jury an edited version.

23 Or I'll strike it and -- or I could hold off in  
24 abeyance on striking it, assuming that you have another witness  
25 who will be able to authenticate it, the whole thing. 12:09

1 MR. GRIGG: Very well, Your Honor.

2 I certainly would request that the Court hold off any  
3 decision in abeyance until additional testimony can be brought  
4 in.

5 However, I do want to point the Court's attention 12:10  
6 towards page 23 of our trial memo with respect to the law of  
7 foundation.

8 At the beginning of that page, the Government recites  
9 the authority that stands for the proposition that, *Photographs*  
10 *can be authenticated by the content they depict under Federal* 12:10  
11 *Rule of Evidence 902(b)(4).*

12 And that's citing the *Stearns* case from 1977.

13 It's a long-established principle that *Even where*  
14 *direct foundation testimony is lacking, the contents of the*  
15 *photograph -- in this case would be the videos -- together with* 12:10  
16 *circumstances for indirect evidence may serve to explain and*  
17 *authenticate a photograph sufficiently.*

18 THE COURT: All right. I'll take another look at  
19 that case and whatever else the case law states. And I will  
20 hold off until -- and give both sides a little bit of time 12:10  
21 during the lunch hour.

22 But at some point, as I said, I would either strike  
23 the -- strike portions of the video, or, in the alternative, if  
24 the Government wants to make a proffer that it has a witness  
25 that will be able to authenticate the entire video, I will be 12:11

1 happy to listen to that.

2 Did you have anything to add, Mr. Larsen?

3 MR. LARSEN: No, Your Honor.

4 THE COURT: All right.

5 MR. THOMAS: Your Honor, I have a different note but 12:11  
6 related to the informant.

7 THE COURT: Go ahead.

8 MR. THOMAS: As you know, Defense Exhibit 6000 is a  
9 redacted version of his release. And we're making a demand for  
10 an unredacted version because we intend to use it during the 12:11  
11 informant's testimony, to have him authenticate it, or have the  
12 jury notice the writing that's on it. I believe it contains  
13 his name, I believe it contains his signature. And unless the  
14 Government is willing to stipulate that that is in fact his  
15 form, I'm going to need to have him authenticate it. 12:11

16 THE COURT: Consult with Government counsel and see  
17 what you can agree upon. And if there is a dispute, then bring  
18 it to my attention.

19 MR. THOMAS: Okay.

20 MR. GRIGG: Your Honor, just so the Government is 12:12  
21 clear, with respect to the individual images from the video,  
22 including the image that Mr. Larsen sought to admit as  
23 authentic, those are not subject to the Court's consideration  
24 about whether its inclined to strike portions of the video,  
25 correct? 12:12

1 THE COURT: No, I would also strike those, everything  
2 except the images from the beginning and the end. I'll look --  
3 I did read your trial brief. I'll look at the case you cited  
4 again and consider that further.

5 But I think to be consistent, the same thing would 12:12  
6 apply to the videos as it would to the photographs.

7 MR. GRIGG: And that's the point, Your Honor. The  
8 contents of the video, the excerpts, including the excerpts  
9 today, contain the circumstances that can contribute to  
10 sufficient foundation. And I don't think there is any doubt 12:12  
11 that he accurately described the lanes and he knows what the  
12 inside of the shooting range looks like, and so on. All those  
13 things --

14 THE COURT: But what he can't testify to -- and in  
15 fact, you know, obviously the recording didn't capture 12:13  
16 everything, or at least what was played didn't capture  
17 everything, right? Because they were there for --

18 MR. GRIGG: He testified that he watched the entire  
19 video beginning to end, and the excerpts that were played were  
20 true and accurate pieces of that entire video, and all of those 12:13  
21 pieces in the video itself appeared unaltered.

22 Now, he can certainly lay the foundation for  
23 Mr. DeLeon's clothing, Mr. Santana's clothing, the AR15 that he  
24 hands him, the fact that --

25 THE COURT: Right. I understand all of that. 12:13

1 MR. GRIGG: Then I'm repeating myself.

2 THE COURT: I understand all of that. I will look  
3 further at the authorities.

4 MR. CHIU: Your Honor, one last issue.

5 After this next witness, the Government would like to 12:13  
6 read into the record the stipulations for the 90211 exhibits  
7 into evidence. Would that be okay?

8 THE COURT: Certainly.

9 MR. CHIU: Thank you, Your Honor.

10 (Lunch recess) 12:14

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C E R T I F I C A T E

DOCKET NO. EDCR 12-92(B) VAP

I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
accurate transcript of the stenographically reported  
proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the regulations  
of the Judicial Conference of the United States.

/S/ Phyllis A. Preston

DATED: August 16, 2014

Federal Official Court Reporter

CSR, FCRR

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